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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

Nos. 731 and 732

RAYMOND W. STARR, Attorney General, in the name of and on behalf of The People of the State of Michigan,

Petitioner,

vs.

B. C. SCHRAM, Receiver of the First National Bank—Detroit, a National Banking Association.

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

Nos. 731 and 732

RAYMOND W. STARR, ATTORNEY GENERAL, IN THE NAME OF AND ON BEHALF OF THE PEOPLE OF THE STATE OF MICHIGAN,

Petitioner,

vs.

B. C. SCHRAM, RECEIVER OF THE FIRST NATIONAL BANK—DETROIT, A NATIONAL BANKING ASSOCIATION,

Respondent.

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

To the Hon. Harlan Fiske Stone, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Summary Statement.

Your petitioner respectfully shows:

That he is the Attorney General of the State of Michigan, a successor to Raymond W. Starr, Attorney General.

That this action was commenced by the filing of a petition for declaratory judgment and other relief in the District Court of the United States for the Eastern District of Michigan, Southern Division, on February 14, 1938, by Raymond W. Starr, the then Attorney General of Michigan, directed against the Hon. J. F. T. O'Connor, the then Comptroller of the Currency of the United States of America, and B. C. Schram, Receiver of the First National Bank—Detroit, a national banking association then and now in process of liquidation, as defendants. That said petition stated, among other things, that on the date of the suspension of said bank, on February 11, 1933, there were approximately 125,106 individual deposit balances, totalling $2,038,-271.48, which appeared as liabilities upon the books of said bank on the date of its suspension, upon which no claims had been presented, or upon which balances no demands had been made for payment by the persons who were entitled to make claim for said deposits, prior to the filing of said petition; that petitioner believed that said depositors had had no dealings with the depository within seven years from the date of the last deposit or withdrawal by each of them made, and that there was good reason to believe that such persons were dead, and that their estates (being the unclaimed and dormant bank deposits) should escheat to the State of Michigan under the laws of escheat thereof, and especially Act No. 238 of the Public Acts of Michigan for the year 1897 and amendments thereto, and especially as amended by Acts Nos. 40, 45 and 171 of the Public Acts of Michigan for 1933; and praying that the Court take jurisdiction of the matter and declare that Act No. 238 of the Public Acts of Michigan for the year 1897 and amendments thereto, being Sections 13454 to 13477 both inclusive, of the Compiled Laws of Michigan for 1929, as amended by Acts Nos. 40, 45 and 171 of the Public Acts of Michigan for 1933,

are applicable to First National Bank—Detroit, a national banking association, insolvent and in process of liquidation, and for such further relief in the premises as to the Court might seem adequate and just. (See R. 3.)

That on March 11, 1938, the case was dismissed as to the Comptroller of the Currency (R. 22).

It was plaintiff's position that the Michigan escheat statutes, viz., Act 238 of the Public Acts of Michigan for 1897, as amended, and the amendments made by Acts Nos. 40, 45 and 171 of the Public Acts of Michigan for 1933 are valid and applicable to national banks in Michigan, solvent and insolvent, and that they provided a specific direction by the Legislature of Michigan under which to proceed. This defendant denied. It was defendant's position that the seven year period of inactivity prescribed by the Michigan escheat statutes must, in any event, antedate the suspension of the bank. This plaintiff denied. It was defendant's position that the accounts other than ordinary accounts are not escheatable. This plaintiff denied.

The case was heard upon stipulation of facts (R. 45) before the Hon. Arthur F. Lederle, District Judge, and his opinion, filed July 6, 1938, (R. 117) and reported in 24 Fed. Supp. 888, held the said Michigan escheat statutes applicable, that the seven year period was tolled as of the suspension of the bank, and further that none but the ordinary accounts were escheatable.

Appeal was taken to the Circuit Court of Appeals of the Sixth Circuit, the case heard, and the opinion of said Court, filed March 14, 1941 (R. 157), reported in 118 F. (2d) 548, held the State of Michigan escheat acts not applicable; that Act No. 205 of the Public Acts of Michigan for 1925 was the sole source of authority in Michigan under which to administer the estates of missing persons and persons presumed

to be dead, for the purposes of escheat; that the seven year period of inactivity was tolled by the fact and at the time of the suspension of the banks; that the Michigan statutes of escheat were more nearly akin to forfeiture than conservator statutes; and that the instant case was governed by the case of *The First National Bank of San Jose* v. *California,* 262 U. S. 366, 43 Sup. Ct. 602, 67 L. Ed. 1030.

Following said opinion, a petition for rehearing was filed (R. 172).

That subsequent to the rendition of the opinion of the Circuit Court of Appeals and the filing of a petition and brief for rehearing, and prior to the denial of said motion for rehearing, the Sixty-first Legislature, Regular Session of 1941, of the State of Michigan, passed an act which was approved by the Governor of said State and given immediate effect, now known as Act No. 170 of the Public Acts of Michigan for the year 1941, and which is amendatory of Act No. 238 of the Public Acts of Michigan for the year 1897 and the amendments thereto, and particularly Acts Nos. 40, 45 and 171 of the Public Acts of Michigan for the year 1933. That said amendatory act, so far as it is pertinent to the issues raised in said case, is almost exclusively remedial; that it does not change the fundamental framework with reference to the handling of escheated and escheatable estates in Michigan, nor does it affect or alter in anywise the position of the Circuit Court of Appeals that the State of Michigan used the wrong procedure, and should have proceeded under Act No. 205 of the Public Acts of Michigan for 1925, which was the basis of the Court's opinion. A motion to advise the Court of such new legislation, together with a copy of said new amendment, was filed with the United States Circuit Court of Appeals for the Sixth Circuit on October 1, 1941 (R. 194).

Rehearing of petition by appellant was denied without opinion on October 16, 1941 (R. 217), and stay of mandate was granted pending the filing of this petition.

Reasons Relied Upon for the Allowance of the Writs.

A. The decision of said Circuit Court of Appeals as to the character of the Michigan statutes of escheat and the applicability to the case at bar is in conflict with the decision of the Circuit Court of Appeals of the Ninth Circuit, in a like matter, in the case of:

Alaska v. *First National Bank of Fairbanks*, 22 F. (2d) 377,

Alaska v. *First National Bank of Fairbanks*, 41 F. (2d) 186.

B. The decision of said Circuit Court of Appeals as to the character of the Michigan statutes of escheat and their applicability to the case at bar is in conflict with applicable local decisions.

C. The decision of said Circuit Court of Appeals as to the character of the Michigan statutes of escheat and their applicability to the case at bar is a decision of a Federal question probably in conflict with the decisions of this Court.

D. The decision of said Circuit Court of Appeals as to the applicability of the Michigan statutes of escheat, by holding them not applicable, so far departs from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

E. The decision of the Circuit Court of Appeals as to the applicability of the Michigan statutes of escheat, holding them to be more akin to forfeiture than conservator stat-

utes, involves an important question of Federal law as respects the comparative and concurrent fields of the operation and liquidation of national banks under the National Banking Act and the State laws relating to the descent of property and escheat, which should be settled by this Court.

F. The importance of the questions involved, compassing as they do the entire field of the liquidation of national banks during the past eight years, and still in progress in practically every State in the union; that appellant's action is a petition for a declaratory judgment, asking the aid of the Court for an interpretation and construction of the law governing escheated and escheatable estates in Michigan; the need of an authoritative and elucidating decision before this liquidation is completed; the conflicting interests of the Federal and the State authorities with respect to the liquidation of national banks in nearly every State in the union; the sovereign right of the State in great amounts of money; and that the public interest will be promoted by a prompt settlement by the Court of the questions involved.

Wherefore, Your petitioner prays that writs of certiorari issue under the seal of this Court directed to the Circuit Court of Appeals for the Sixth Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the Record and of the proceedings of the said Circuit Court of Appeals had in the cases numbered and entitled in the docket as Nos. 8461 and 8462, Raymond W. Starr, Attorney General, in the name and in behalf of the People of the State of Michigan, appellant and cross-appellee, vs. J. F. T. O'Connor, Comptroller of the Currency of the United States of America, and B. C. Schram, Receiver of the First National Bank—Detroit, a National Banking Association, appellee and cross-appellant, to the end that this case may be reviewed and determined by this

Court as provided for by the statutes of the United States; and that the judgment herein of said Circuit Court of Appeals be reversed by this Court; and for such further relief as to this Court may seem proper.

Dated October 29, 1941.

HERBERT J. RUSHTON,
Attorney General for the State of Michigan;
JAMES F. SHEPHERD,
Chief Assistant Attorney General for the State of Michigan;
MERLIN WILEY,
Of Counsel.

SUPREME COURT OF THE UNITED STATES

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Nos. 731 and 732

RAYMOND W. STARR, ATTORNEY GENERAL, IN THE NAME OF AND ON BEHALF OF THE PEOPLE OF THE STATE OF MICHIGAN,

Petitioner,

vs.

B. C. SCHRAM, RECEIVER OF THE FIRST NATIONAL BANK—DETROIT, A NATIONAL BANKING ASSOCIATION.

BRIEF IN SUPPORT OF PETITION FOR WRITS OF CERTIORARI.

I.

Opinion of Court Below.

The opinion in the District Court for the Eastern District of Michigan, Southern Division (R. 117) is reported in 24 Fed. Supp. 888.

The opinion of the Circuit Court of Appeals of the Sixth Circuit is reported in 118 F. (2d) 548.

II.

Jurisdiction.

1. The date of the decision to be reviewed is March 14, 1941.

Petition for rehearing was filed by appellant on April 5, 1941 (R. 172) and denied October 16, 1941 (R. 219).

2. The statutory provision which is believed to sustain the jurisdiction of this Court is Section 240 of the Judicial Code of 1911, as amended by the act of February 13, 1925, U. S. C. A. Title 28, Sec. 347.

3. This case involves the construction of the limitation of the field of applicability of the statutes of the State of Michigan in the liquidation of a national bank under the National Banking Act, and the conflict between the ruling of the District Court for the Eastern District of Michigan, Southern Division, and the Circuit Court of Appeals of the Sixth Circuit, to which said case was appealed, and also the conflict between the decision of the latter Court and the decision of the Circuit Court of Appeals of the Ninth Circuit, and the conflict between the instant decision of the Circuit Court of Appeals of the Sixth Circuit and the decisions of this Court.

4. The cases believed to sustain said jurisdiction are as follows:

First National Bank of San Jose v. *California,* 262 U. S. 366, 43 Sup. Ct. 602, 67 L. Ed. 1030;

National City Bank of New York v. *The People of the Philippine Islands,* 302 U. S. 651, 58 Sup. Ct. 269, 82 L. Ed. 504.

III.

Statement of the Case.

This has already been stated in the preceding petition (page 1) which is hereby adopted and made a part of this brief.

IV.

Specification of Errors.

1. The Court erred in holding that the State of Michigan should have followed the procedure prescribed by Act No. 205 of the Public Acts of Michigan for 1925 with respect to the estates of missing persons.

2. The Court erred in holding that the State of Michigan could not proceed under its escheat statutes, and particularly Act No. 238 of the Public Acts of Michigan of 1897, as amended, for the administration of the estates of missing persons.

3. The Court erred in holding that the National Banking Act of the United States constitutes such a complete system for the winding up of national banks that the attempt by the State of Michigan to escheat escheatable property in the possession and under the control of national banks and receivers of national banks constitutes an unlawful interference with the liquidation of a national bank.

4. The Court erred in upholding the tontine right of the liquidating bank to retain money belonging to absent or unknown depositors.

5. The Court erred in holding that the seven year period of inactivity must antedate the suspension of the bank.

6. The Court erred in holding that only accounts of natural persons can be subject to escheat under the Michigan laws.

7. The Court erred in holding that the Receiver was not required to account to the State of Michigan for unsurrendered certificates of deposit, cashiers' checks, certified checks, drafts on correspondent banks, Christmas Club checks and like *unsurrendered negotiable instruments.*

8. The Court erred in holding that the instant case is governed by the case of *First National Bank of San Jose* v. *State of California,* 262 U. S. 366.

9. The Court erred in holding the Michigan escheats laws to be in closer kin to "illegitimate" laws of forfeiture than to legitimate laws of escheat.

ARGUMENT.

Summary.

The historic facts upon which this cause is based are set forth succinctly and *seriatim* in the Stipulation of Facts and the Supplemental Stipulation in the court of first instance (R. 45-99) and in the statutes involved, which are a matter of permanent record in the respective statute books of the United States and of the State of Michigan.

The pertinent facts in the course of this cause in the lower courts are set forth in the petition herewith filed, and to which reference is made. The questions involve only the construction of the law in its application to the facts, by the decision of the lower court. The position of appellant is that the Circuit Court of Appeals of the Sixth Circuit is in disagreement with the Circuit Court of Appeals of the Ninth Circuit upon a similar state of facts in a like matter; that its decision as to the Michigan escheats statutes, their character and intent, is in conflict with that of the Michigan Supreme Court; that its decision is in conflict with the decisions of this Court; and that the instant case and the ques-

tions involved are matters of such public interest, compassing as they do the entire field of national bank liquidation in practically every state in the Union, as to make advisable an authoritative and elucidating decision upon the questions involved.

As to Points A to F inclusive of the reasons relied upon for the issuance of the writs:

POINT A.

The decision of said Circuit Court of Appeals as to the character of the Michigan statutes of escheat and the applicability to the case at bar is in conflict with the decision of the Circuit Court of Appeals of the Ninth Circuit, in a like matter, in the cases of:

Alaska v. *First National Bank of Fairbanks,* 22 F. (2d) 377;
Alaska v. *First National Bank of Fairbanks,* 41 F. (2d) 186.

POINT B.

The decision of said Circuit Court of Appeals as to the character of the Michigan statutes of escheat and their applicability to the case at bar is in conflict with the applicable local decisions.

The Supreme Court of Michigan has held that the statutes of escheat relied upon herein are applicable proceedings in the premises. See *Braun* v. *McPherson,* 277 Mich. 396. This was an action to recover damages under the escheatable estates statutes, *i. e.,* under Act 238 of the Public Acts of Michigan for 1897, as amended. Plaintiff's suit was dismissed by the Circuit Judge on defendant's motion. The Court construed the various escheats statutes, under which the action was brought, and concluded that they were not

only constitutional, but the proper procedure. The conservator character of the statute is clearly set forth by the Chief Justice on page 403, as follows:

> "Escheat proceedings are not solely for the benefit of the State. Instead the statutory proceeding clearly contemplates that under certain defined conditions property becomes *prima facie* an escheat. Thereupon the State takes possession of the property or the proceeds thereof *in the capacity of a conservator* for the benefit of any person lawfully entitled to it. Any time within 10 years the State will account to anyone lawfully entitled to the property. 3 Comp. Laws 1929, Sec. 13476."

POINT C.

The decision of said Circuit Court of Appeals as to the character of the Michigan statutes of escheat and their applicability to the case at bar is a decision of a Federal question probably in conflict with the decisions of this Court.

This is especially evident in the Court's statement that the seven year period of limitation was tolled by the suspension of the bank because the seven year period did not include any portion of the time that the bank was suspended by operation of law, on page 8 of his opinion:

> "Inactivity of the depositor for seven years, *due to other causes than operation of law,* is a *conditio sine qua non* of all the statutes upon which any right of escheat must essentially rest."

There is nothing in the fact of the bank's suspension and its being in receivership that makes a man less subject to the presumption of being dead, on the one hand, or precludes him from getting in touch with the bank as his depositary, on the other. In fact, the operation of the liquidation under the national banking act makes it imperative, if he is to be recognized in distribution. The "operation of law" does not suspend the laws of assignment, garnishment, attach-

ment, the tax laws, or any other law under which any person or persons had rights of action against the bank, nor does it suspend any other of the laws of descent. If a depositor dies, his heirs succeed to his right as a depositor. Those rights are not tolled by operation of law because the bank is insolvent and in liquidation.

The Court below set at naught the decisions of the Supreme Court of the State of Michigan applicable thereto, in violation of the direction of this Court.

Cope v. *Cope,* 137 U. S. 682, 11 Sup. Ct. 222, 34 L. Ed. 832;

Erie Railroad Co. v. *Tomkins,* 304 U. S. 64, 82 L. Ed. 1188;

Ruhlin v. *New York Life Insurance Co.,* 304 U. S. 202, 82 L. Ed. 1290.

POINT D.

The decision of said Circuit Court of Appeals as to the applicability of the Michigan statutes of escheat by holding them not applicable, so far departs from the accepted and usual course of judicial proceedings as to call for the exercise of this Court's power of supervision.

The lower court set at naught the deliberate procedure provided for the escheat of deposits in national banks in liquidation by the Legislature of the State and approved by its Supreme Court, and prescribed a statute totally impotent to achieve the desired end, and not intended for such.

Beckwith v. *Bates,* 228 Mich. 400;

Braun v. *McPherson,* 277 Mich. 396;

Lafayette Transfer & Storage Co. v. *Public Utilities Commission,* 287 Mich. 488;

Erie Railroad Company v. *Tomkins,* 304 U. S. 64, 82 L. Ed. 1188;

Ruhlin v. *New York Life Insurance Co.,* 304 U. S. 202, 82 L. Ed. 1290.

Point E.

The decision of the Circuit Court of Appeals as to the applicability of the Michigan statutes of escheat, holding them to be more akin to forfeiture than conservator statutes, involves an important question of Federal law as respects the comparative and concurrent fields of the operation and liquidation of national banks under the National Banking Act and the State laws relating to the descent of property and escheat, which should be settled by this Court.

The Circuit Court of Appeals first held that the procedure in the instant case was wrong, and then that the case was governed by the case of *First National Bank of San Jose* v. *California*, 262 U. S. 366, 43 Sup. Ct. 602, 67 L. Ed. 1030. In that case the statute of the State of California involved was a pure forfeiture statute, and so denominated by this Court. The statutes of Michigan, under which this action was brought, were held by the Supreme Court of Michigan to be of a conservator nature; and finally the effective objection made by Mr. Justice McReynolds in the *San Jose* case, viz. that the effective prosecution of the procedure under the strict forfeiture act of California would result in the breaking of the contract of deposit originally made by the bank with the depositor. That question is definitely not pertinent nor applicable in the case at bar. In the *San Jose* case the bank was solvent. In the instant case the First National Bank—Detroit was insolvent, and the contract with the depositors had been broken by operation of law on the part of the depository. When the reason for the rule ceased to exist, the rule fell.

First National Bank of San Jose v. *California*, 262 U. S. 366, 43 Sup. Ct. 602, 67 L. Ed. 1030,

in which is set forth the pertinent portion of the California statute in question.

Braun v. *McPherson*, 277 Mich. 396;
Michigan Statute of Escheats (R. 61-89).

POINT F.

The importance of the questions involved, compassing as they do the entire field of the liquidation of national banks during the past eight years, and still in progress in practically every State in the union; that appellant's action is a petition for a declaratory judgment, asking the aid of the Court for an interpretation and construction of the law governing escheated and escheatable estates in Michigan; the need of an authoritative and elucidating decision before this liquidation is completed; the conflicting interests of the Federal and the State authorities with respect to the liquidation of national banks in nearly every State in the union; the sovereign right of the State in great amounts of money; and that the public interest will be promoted by a prompt settlement by the Court of the questions involved.

The point is self-explanatory; the liquidating of this bank in the instant case involves several millions of dollars and much more in realty, as every national bank in the State of Michigan was closed during the bank closing, so-called, and by far the greater number of the large ones were in liquidation. It is common knowledge that the situation was similar in the other States. Legal questions relating to millions of dollars to which Michigan and many other States have rights under their sovereign authority so often upheld by this Court, are now in confusion, and will be until this Court has spoken.

It should be borne in mind that appellant's action is a petition for a declaratory judgment, asking the aid of the Court in the interpretation and construction of the law governing escheated and escheatable estates in Michigan, and especially the remedial amendments to Act No. 238 of the Public Acts of Michigan for the year 1897 made by the Michigan Legislature. This being remedial legislation, it

can be considered by the Court up to the time of final opinion. See *Cooley's Constitutional Limitations, 8th Edition,* Vol. 2, Chapter XI, page 789.

Conclusion.

It is therefore respectfully submitted that this case is one calling for the exercise by this Court of its supervisory power, by granting writs of certiorari, and thereafter reviewing and reversing said decision.

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Attorney General for the State of Michigan.
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Chief Assistant Attorney General for the State of Michigan,
MERLIN WILEY,
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vs.

B. C. SCHRAM, Receiver of the First National Bank-Detroit, a National Banking Association,

Respondent.

BRIEF ON BEHALF OF RESPONDENT, B. C. SCHRAM RECEIVER, FIRST NATIONAL BANK-DETROIT, IN OPPOSITION TO PETITION FOR WRITS OF CERTIORARI

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

Nos. 731 and 732

RAYMOND W. STARR, Attorney General, in the name of and on behalf of the People of the State of Michigan,
Petitioner,

vs.

B. C. SCHRAM, Receiver of the First National Bank-Detroit, a National Banking Association.
Respondent.

BRIEF ON BEHALF OF RESPONDENT, B. C. SCHRAM, RECEIVER, FIRST NATIONAL BANK-DETROIT, IN OPPOSITION TO PETITION FOR WRITS OF CERTIORARI

I

RESPONDENT'S SUMMARY STATEMENT OF FACTS

The First National Bank-Detroit closed its doors on February 11, 1933, and never thereafter resumed a normal banking business. The respondent is the present Receiver for said bank, having been appointed as such by the Comptroller of the Currency of the United States. At the time the bank closed, there were approximately 700,000 depositors therein. (R. 45-47)

In accordance with the provisions of the National Bank Act (Section 193, Title 12 U.S.C.; app. 76-77), the Receiver forthwith published a notice calling on all persons having claims against the bank to present the same and make legal proof thereof. The great bulk of the depos-

itors of the bank promptly complied with this notice, but there were approximately 123,000 small accounts, averaging $9.00 or less, which had been inactive and dormant for a number of years, for which claimants failed to appear. (R. 47-49)

The State of Michigan sought some means of obtaining these unproven accounts for its Primary School Fund. There were, however, no statutes in effect at the time of the closing of the First National Bank-Detroit which would have enabled the State of Michigan to proceed against these inactive accounts in the manner proposed herein by the petitioner. Under the laws in effect on February 11, 1933,* it was required in order that deposit balances, which had been inactive for seven years or more, to be escheated to the State:

a. That there be a proper showing by the State of Michigan that there was good cause to believe that the depositor in question was missing or dead.

b. That such depositor died intestate, possessing property, and leaving no heirs.

c. That the estate of such a depositor be administered as that of a deceased person.

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* Act 151 of the Public Acts of Michigan for 1846, contained in Section 13454 of the Compiled Laws of Michigan for 1929. (app. 21)

Act 238 of the Public Acts of Michigan for 1897, contained in Sections 13455 to 13477, inclusive, of the Compiled Laws of Michigan for 1929. (app. 21-35)

Act 205 of the Public Acts of Michigan for 1925, contained in Sections 15624 to 15653, inclusive, of the Compiled Laws of Michigan for 1929. (app. 35-50)

The State of Michigan, however, apparently was desirous of reaching the inactive deposit balances above described (averaging $9.00 or less) without the necessity or trouble and expense of complying with the orthodox escheat statutes then in effect. Accordingly, two bills were passed by the Michigan Legislature after the First National Bank-Detroit closed its doors.

On ~~August~~ April 6, 1933, two months after the First National Bank-Detroit closed, a special act of the Legislature known as Act 45 of the Public Acts of Michigan for 1933 (Section 13464-1 et seq., Mich. Comp. Laws for 1929, as amended; app. 50-52), was enacted, to take effect immediately. Among other things, Section 10a thereof provided that it should be sufficient proof, for the purpose of escheating dormant deposit balances, that there were no withdrawals from, or deposits to, said accounts for a period of seven years. No proof was required either that the depositor was missing or dead or that he died intestate and left no heirs.

Shortly thereafter, on June 28, 1933, another special act was passed, known as Act 171 of the Public Acts of Michigan for 1933 (Section 13463-1 et seq., Mich. Comp. Laws for 1929, as amended; app. 52-56), in which it attempted to invoke what seems to be a clear [redacted] forfeiture proceeding with respect to dormant deposit accounts in closed banks in Michigan. In an early decision rendered on November 17, 1933, the Circuit Court for Oakland County, Michigan, held Act 171 in violation of the Michigan Constitution. The State of Michigan took no appeal from this decision. For the convenience of the Court, we are setting forth a copy of said unreported opinion in the

appendix hereto, said case being entitled *Rudolph E. Reichert, Commissioner of Banking of the State of Michigan v. Peoples State Trust and Savings Bank of Pontiac.* (app. 16-20) This unappealed decision of an intermediate Michigan court holding Act 171, *supra,* to be unconstitutional is binding on the Federal Courts. *Stoner v. New York Life Insurance Company,* 311 U.S. 464 (1940).

[redacted]

After the Court of Appeals had decided adversely to the petitioner in these very proceedings, and while the Attorney General's petition for a rehearing in that Court was pending, the Michigan Legislature enacted still another escheat law, known as Act 170 of the Public Acts of Michigan for 1941 (Section 13458-1 et seq., Mich. Comp. Laws for 1929, as amended; app. 57-74), which Act was signed by the Governor of Michigan on June 16, 1941, and declared immediately effective. This new statute sought to establish a completely revised code for escheating bank accounts from a closed bank. On October 1, 1941, the Attorney General filed a motion in the Court of Appeals to advise that Court of the enactment of the new statute, but the Court of Appeals took no cognizance thereof. (R. 194-217)

On April 12, 1938, the then attorney General of the State of Michigan filed a petition for declaratory judgment relief against the Receiver of the bank, seeking a determination that the then existing escheat statutes were applicable to the insolvent First National Bank-Detroit. At the time of said filing, the Attorney General alleged that there were individual dormant accounts in said bank, totalling approximately $1,799,000. (R. 49)

Of this amount, approximately $483,000.00 may be

eliminated since it represented accounts which were claimed and/or held by the Receiver as offsets for indebtedness due from the owners thereof to the bank. There were likewise included in this total approximately $325,000.00 in accounts representing outstanding negotiable instruments of issue, such as Cashier's Checks, Certified Checks, Certificates of Deposit, Drafts on correspondent banks, et cetera. In addition thereto there were included within the scope of the Attorney General's petition a large number of dormant accounts of other than natural persons, such as partnerships, corporations and associations. (R. 49; 58-59)

For the purpose of trial in the District Court, the respondent Receiver made a further analysis of the inactive savings accounts, aging them upon the basis of inactivity. It developed therefrom that out of a total of 91,196 individual savings accounts, totalling $664,129.38, involved herein, only 331 accounts, totalling $13,642.75, had been inactive for seven years prior to the suspension of the bank on February 11, 1933. (R. 98-99)

The case was tried in the United States District Court in Detroit upon an agreed written stipulation of facts. The Court, in a written opinion, held the escheat acts applicable to the insolvent First National Bank-Detroit, subject to the limitations that they applied only to those accounts which had been inactive for seven years prior to suspension, and that they applied neither to outstanding negotiable instruments of issue nor to accounts other than those of natural persons. (117-122)

The Attorney General of Michigan appealed from this decision to the United States Circuit Court of Appeals for the Sixth Circuit, and the respondent Receiver

cross-appealed. (R. 130, 133) The Court of Appeals reversed the District Court upon the grounds contended for by the Receiver in his cross-appeal and held that the Michigan escheat acts were tantamount to a forfeiture proceeding and inapplicable to a national banking association under the rule established by this Court in the landmark decision of *First National Bank of San Jose v. California*, 262 U. S. 366 (1922).

II

THE ATTORNEY GENERAL'S PETITION SHOULD BE DENIED BECAUSE THE INSTANT PROCEEDINGS ARE MOOT

The Attorney General in his original petition sought a declaratory judgment interpreting the various acts of the Michigan Legislature above referred to, with the exception of the recently enacted Act 170 of the Public Acts of Michigan for 1941, effective June 16, 1941 (app. 57-74). The trial in both the District Court and in the Court of Appeals involved a judicial declaration of rights under the then existing statutes. (R. 16-17)

After the Court of Appeals had rendered its decision, the State of Michigan enacted a completely new escheat statute, above described, which by the very terms of its preamble amends portions of the existing escheat statutes, repeals other portions of said acts, and adds new sections thereto. This act contains no saving clause as to pending litigation. (R. 200) Accordingly, even if this Court should grant certiorari and reverse the decision of the Court of Appeals, it would be impossible for the petitioner to proceed to escheat deposit balances in the First National Bank-Detroit under the statutes presented for determination in the Attorney General's

original petition. No demand has ever been made upon the respondent by the Attorney General to comply with the new act. Respondent therefore submits that with the passage of this new act, the instant litigation has become moot, both as to the old acts and as to the new act.

Borchard in his work on *Declaratory Judgments* (page 60) defines a moot case, *inter alia*, as one brought about "by alteration in the circumstances of the parties or subject matter, so as to make the judgment not decisive or controlling of acts and contested rights, but a pronouncement having academic interest only." To the same effect see the decisions of this Court in *United States v. Alaska Steamship Co.*, 253 U. S. 113, 116 (1920); *Gibbes v. Zimmerman*, 290 U. S. 326 (1933); *Berry v. Davis*, 242 U. S. 468, 470 (1917).

In view of the passage of the new act, any decision of this Court interpreting the old act would be useless and meaningless. To decide this litigation under the new act would be improper both because the new statute was enacted after the time of the filing of the petition for declaratory judgment by the Attorney General, and also because there is at present no "actual controversy" pending as to said new act.

This Court has repeatedly held that there must be an "actual controversy" in order to invoke the jurisdiction of the federal courts under the Federal Declaratory Judgment Act, and that this Court will not render advisory opinions. See *Aetna Life Insurance Company v. Haworth*, 300 U. S. 227, 239, 240 (1937); *Maryland Casualty Company v. Pacific Oil & Coal Company*, 85 L. Ed. Adv. Op. 455, 457 (1941).

Petitioner alleges that the new act, being remedial in nature, may be considered by this Court up to the time of final opinion. Respondent's answer to this contention is two-fold: First, that the rule contended for by the Attorney General does not apply in suits for declaratory judgment, and second, that the statute is not remedial, but is substantive in character.

We have already discussed the first of these points to the effect that no "actual controversy" exists at the present time as to Act 170 of the Public Acts of Michigan for 1941 (app. 57-74). As to the second of these points, we shall not take time to go through the new act section by section, but merely call the Court's attention to a few of the sections therein which are substantive and not remedial in nature.

Section 4 (b) seeks to include within the definition of escheatable property, that belonging to other than natural persons.

Paragraph 2 of Section 9 (a), which we quote verbatim herein, seeks, by legislative fiat, to overrule and reverse the effect of the decision of the Court of Appeals in the instant case:

> "The attorney general shall have the right and be permitted to file 1 or more claims with the receiver, trustee, custodian or liquidating agent of such depository, which shall be allowed or disallowed the same as if filed by the depositor, and subject to the same set-offs. Such claim or claims filed by the attorney general shall cover and include all deposits for which no claims have been filed by the depositor or depositors, and may be

filed at any time before payment of final dividend. Dividends shall be paid to the state board of escheats on all claims so filed by the attorney general, and allowed."

Section 13a (which incidently appears to be a pure forfeiture provision) provides that a depositor shall be presumed to have abandoned property with which he has had no dealing for seven years, and that said property shall escheat to the state without any further proof upon the part of the state.

Section 23 sets forth an innovation with respect to the escheating of negotiable instruments of issue.

Actually, Act 170 presents a new code for escheatage of dormant bank accounts to the State of Michigan. No demand has been made upon the respondent by the petitioner to comply therewith. The respondent therefore submits that it would be improper for this Court to pass upon this new act at this time, that the case as to the old statutes is moot, and that therefore the Attorney General's petition should be denied.

III

RIGHTS OF DEPOSITORS AND CREDITORS OF AN INSOLVENT NATIONAL BANK ARE FIXED AS OF THE DATE OF SUSPENSION AND CANNOT BE AFFECTED BY SUBSEQUENT STATE LEGISLATION.

It is fundamental law relating to the liquidation of an insolvent national bank that all claims against it must be liquidated and determined as of the date of suspension, and that nothing done subsequent to the

date of suspension can affect, alter, or create a claim against an insolvent national bank. Two leading decisions of this Court establish this principle. *White v. Knox,* 111 U. S. 784 (1884); *Merrill v. National Bank of Jacksonville,* 173 U. S. 131, 143 (1899).

Both Acts 45 and 171 of the Public Acts of Michigan for 1933 (app. 50, 52) were passed subsequent to the suspension of the First National Bank-Detroit. The Attorney General clearly alleges in his petition that he seeks a declaration that these acts are applicable to the respondent. (R. 17) It is equally clear that since the rights of creditors and depositors are fixed as of the date of suspension, the State of Michigan cannot at this time attempt to apply as against said First National Bank-Detroit, acts passed subsequent to its closing. In this, there is nothing new or startling; it is but the application of a long and well-established rule of law.

IV

NO NEW QUESTION IS PRESENTED BY THE PETITIONER

The decision of the Court of Appeals is in conflict with neither the decision of any other Circuit Court of Appeals nor with the decisions of the Supreme Court of Michiagn. It is directly in harmony with the long-established law of the land as heretofore announced by this Court in the case of *First National Bank of San Jose v. California,* 262 U. S. 366 (1922).

The two decisions of the Ninth Circuit Court of Appeals urged as being in conflict with the decision below, to-wit, *Territory of Alaska v. First National Bank of*

Fairbanks, 22 Fed. (2d) 377 (1927), and *Territory of Alaska vs. First National Bank of Fairbanks,* 41 Fed. (2d) 186 (1930), are clearly distinguishable.

The Alaska cases upheld the validity of escheating dormant deposit balances under an orthodox escheat statute, which required that it be established by satisfactory proof that the depositor died intestate and without heirs. Judge Dietrich, speaking for the court in the first of the Alaska cases, stated this very clearly on page 379 of the opinion, when he said:

> "Section 1, above quoted, defines the scope of the act, and the attorney general cannot disturb any account, or the bank's full control over it, *unless and until, with the information he seeks from the bank, or otherwise, he shall have secured a valid judicial determination that the depositor died intestate, without heirs, in which case the deposit, like other property is subject to escheatment.* In essence the result is the same as where, in the case of an administered estate, the probate court requires the deposit to be delivered to the administrator, and ultimately, upon a finding of no heirs, turns it over to the territory." (Italics ours)

An even stronger indication of the nature of the proof required under the Alaska statutes in order to obtain a judicial determination that the depositor died intestate and without heirs, is presented in the second Alaska case, particularly on page 188 thereof.

The Michigan decision of *Braun v. McPherson,* 277 Mich. 396, 269 N. W. 211 (1936), likewise relied upon

by the petitioner, is neither in conflict with the decision of the Court of Appeals nor with the *San Jose* case, *supra*. *Braun v. McPherson* involved a section of Act 45 of the Public Acts of Michigan for 1933 (app. 51) not in controversy herein and involved a state bank. Hence, it did not and could not consider the questions involved herein, as to whether the escheat acts of Michigan constitute a forfeiture proceeding insofar as a national banking association is concerned, or as to whether they constitute an invasion of a purely federal statutory field, governed by the National Bank Act, and are, therefore, in violation of the Federal Constitution.

As this Court has repeatedly held, the National Bank Act establishes a complete, exclusive, and exhaustive system for liquidating insolvent national banks. *Cook County National Bank v. United States,* 107 U. S. 445 (1883); *Davis v. Elmira Savings Bank,* 161 U. S. 275, 283 (1896).

The so-called escheat acts of Michigans are not true escheat acts. They do not provide for the taking by the state of property where it has been properly and judicially determined that a natural person died intestate, possessing property, and without heirs. To the contrary, they establish a forfeiture proceeding under which mere inactivity of a bank account for seven years is sufficient grounds for the state taking over the property of the owner. Such a procedure is a clear invasion of the field governed by the National Bank Act and is completely covered by the ruling in the *San Jose* case.

V

CLAIMS AGAINST AN INSOLVENT NATIONAL BANK MUST BE DETERMINED SOLELY UNDER THE NATIONAL BANK ACT

The matter of establishing and proving claims against an insolvent national bank is covered completely and exclusively by the National Bank Act. Section 191, Title 12, U. S. C. (app. 75), establishes the grounds for the appointment of a Receiver. Section 192 (app. 75-76) outlines the Receiver's general duties, among which it is provided that "such Receiver shall pay over all money so made to the Treasurer of the United States subject to the order of the Comptroller." Section 193 (app. 76-77) provides for notice to creditors.

Section 194 (app. 77), providing for the distribution of assets in an insolvent national bank, is particularly important, and for that reason we quote it in full:

> From time to time, after full provision has been first made for refunding to the United States any deficiency in redeeming the notes of such association, the comptroller shall make a ratable dividend of the money so paid over to him by such receiver on all such claims as may have been proved to his satisfaction or adjudicated in a court of competent jurisdiction, and, as the proceeds of the assets of such association are paid over to him, shall make further dividends on all claims previously proved or adjudicated; and the remainder of the proceeds, if any, shall be paid over to the shareholders of such association, or their legal representatives, in proportion to the stock by them respectively held."

Section 264 (n) (3) of Title 12, U. S. C. (app. 81-82), provides in part as follows:

> The Comptroller of the Currency may, in his descretion, pay dividends on proved claims at any time after the expiration of the period of advertisement made pursuant to section 193 of this title, and no liability shall attach to the Comptroller of the Currency or to the receiver of any national bank by reason of any such payment for failure to pay dividends to a claimant whose claim is not proved at the time of any such payment."

Under the established custom and practice of the office of the Comptroller of the Currency of the United States in the administration of insolvent national banks, all cash in the hands of the Receiver of an insolvent national bank, and in the hands of the Comptroller of the Currency for said bank, is distributed in the form of a final dividend to those creditors, and only those creditors who have established their claims, either to the satisfaction of the Comptroller of the Currency or by adjudication in a court of competent jurisdiction.

Under this custom and practice, no reserve is set up by the Comptroller of the Currency to satisfy any claims of depositors or creditors which might be asserted after a final dividend is declared and the receivership terminated. If any surplus remains after payment in full to creditors and depositors, then, under Section 197 of Title 12, U. S. C. (app. 77-81), said surplus goes to the shareholders of the bank.

This exclusive statutory system for the liquidation of insolvent national banks has been thoroughly reviewed over the last seventy-five years by this Court. No new

conflict between local law and the National Bank Act is presented herein. The *San Jose* decision is controlling here. Obviously, in determining whether the Michigan statutes constitute an unwarranted invasion of a federal statutory field, similar to that of the California statute in the *San Jose* case, it matters not whether the national bank be solvent or insolvent.

Only those creditors and depositors who have established their claims in compliance with the terms of the National Bank Act are entitled to share ratably in the distribution of the receivership assets. In this, likewise, there is nothing new presented to this Court. It has long been the rule not only in insolvent national bank liquidation, but in insolvency proceedings generally, that those creditors, and only those creditors, who filed claims are entitled to share in the distribution of the insolvent estate. Such is the general rule in bankruptcies, equity receiverships, decedent estates, et cetera.

CONCLUSION

For the reasons above, said respondent respectfully submits that the petitioner has failed to show any valid reasons for the allowance of writs of certiorari in the within case, and that, therefore, the Attorney General's petition should be denied.

Respectfully submitted,

ROBERT S. MARX
FRANK E. WOOD,
Attorneys for Respondent

GEORGE P. BARSE,
Attorney for Comptroller
of the Currency
Of Counsel.

APPENDIX

STATE OF MICHIGAN
CIRCUIT COURT FOR THE COUNTY OF OAKLAND
IN CHANCERY

Rudolph E. Reichert, Commissioner of Banking of the State of Michigan,
Plaintiff,
v. No. 16,535
Peoples State Trust & Savings Bank,
Defendant.

BEFORE THE FULL COURT

Patrick H. O'Brien, Atty. Genl. and Maxwell L. Black, Asst. Atty. Genl. and Norman H. Brinkrant,
Attorneys for Petitioner
Pelton & McGee and Ralph T. Keeling, Attorneys for defendant.

This matter comes before the court on petition of Norman Brinkrant, Public Administrator for Oakland County, praying that the receiver of defendant bank be directed to comply with a demand of the State Public Administrator to turn over to the board of escheats of the State of Michigan, all unclaimed deposits and securities as required by Act 171, Public Acts 1933. The only question involved is the constitutionality of the statute.

It is unnecessary to devote any time to a discussion of the escheat statutes, (Sec's. 13,455 to 13,477 CL '29, and Sec's. 15,624 to 15,633 CL '29) as the validity of such statutes has been repeatedly sustained where provisions have been made to safeguard the rights of the absentee owner, by providing means by which he can recover

possession of his property in the event he shall return to claim it (Sec's 13,475-76 CL '29) and to indemnify the custodian should he later be required to carry out his contract (Sec. 13,477 CL '29).

By ACT 171 PA 1933 the legislature undertook to amend the escheat statutes so as to include certain deposits in banks which were in the process of liquidation. Briefly, the act attempts to bring within the provisions of the statute of escheats, (Sec. 9a, Act 171 PA 1933):

1. Deposits to which no claim or for which no demand has been made within the time within which a claim is required to be made by law or by decree by depositors, and;

2. Deposits which have been unclaimed for seven years, and regarding which the depositor has had no dealings with the bank for a period of seven years from the date of the last deposit.

After the expiration of six months from the date of appointment of a receiver, the state public administrator is required to make a formal demand in writing for the transfer of such escheated deposits, and it is thereupon made the duty of the receiver to transfer all such escheated deposits to the board of escheats. The only notice given to the owner is the publishing of such demand at least once within thirty days in the same manner as probate notices are published. (Sec. 9a (a), Act 171 PA 133). The only provision in the act for the protection of the owner of any such deposit is the following, (Sec. 9c)

> "Depositors of such escheated funds, their heirs or assigns ,shall have no greater rights against the people of the State of Michigan than he or they would have against the receiver, custodian or liquidating agent of the bank or trust company that was in possession or control of the escheated deposits enumerated in nine-a of this act."

and the direction that in all other respects, except as therein provided, funds escheated to the state shall be treated and administered in the same manner as other escheated estates, (Sec. 9e)

1. No means provided for recovery of property delivered to state board of escheats.

The statute gives the owner of escheated deposits no right of action against the state should he return to claim his property after it has been delivered to the state board of escheats by the receiver of a liquidating bank. In the absence of statute, a citizen has no right of action against the state, and it requires no argument to demonstrate that a statute which requires the custodian of property held under a contract, to deliver such property to the state, without preserving the rights of the owner, violates the clause in both the State and Federal constitutions forbidding the impairment of the obligations of a contract, or the taking of property without due process of law. The sections of the statute which provide that the depositor shall have no greater rights against the state, than he would have had against the receiver, or, that funds escheated to the state under the provisions of the act shall be treated and administered in the same manner as other escheated estates, falls far short of giving him

a right of action by which he can enforce his claim against the state in the same manner as against the receiver.

2. Statute provides no protection to receiver.

The provisions of the prior statute covering the escheat of unclaimed bank deposits, provides that when such deposits are delivered to the state, and the bank is thereafter required to carry out and perform its contract, the state shall indemnify the bank, (Sec. 13,477 CL '29), but this section, by its express terms, can apply only where the deposit is delivered under sections 8, 10 and 11 of the original act. Should a receiver deliver unclaimed deposits to the state, in compliance with the demand under the 1933 act, he is left without any protection whatever in the event a depositor should later return to claim his property.

While courts are reluctant to declare an enactment of the legislature unconstitutional, the statute in question is so loosely drawn and so at variance with our existing laws on the subject, that it is impossible to give it effect without violating the provisions of both the State and Federal constitutions. Before the state can lay claim to the deposits in question, it must first provide adequate protection to both the depositor and the receiver. Depositors in the past have entrusted their property to the bank, under a binding contractual obligation, which includes not only the bank but also its receiver. The receiver would violate his trust and render himself personally liable to the owner, if he should turn over the property of one of its depositors to the state without an undertaking by the state to carry out and perform the obligations of the bank and the receiver, and to fully

protect and reimburse the receiver in the event that future claims might be made against him on account of the deposit.

For the reasons pointed out it must be held that the act relied upon is unconstitutional, and the receiver is under no obligations to comply with the demand. The petition will therefore be dismissed without costs.
Filed: Nov. 17, 1933.

GLENN C. GILLESPIE,
FRANK L. DOTY,
FRANK L. COVERT.

COMPILED LAWS OF MICHIGAN FOR 1929

CHAPTER 263. ESCHEATED ESTATES

Act 151, 1846, P. 273; Imd. Eff. May 18

AN ACT concerning the estate of intestates escheated to this state.

13454. BOARD OF ESCHEATS; MEMBERS, POWERS. SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Michigan,* That the trustees appointed under the "Act to provide for the collection of certain assets transferred to the state, and for other purposes", approved February 17, 1842, shall take charge of all lands or other property which may have escheated, or which may hereafter escheat to the state, by reason of the owner thereof dying intestate, and leaving no legal heirs thereto according to the statutes in such case made and provided; and the said trustees may sell or otherhwise dispose of the said lands or property in such manner as they may deem for the best interests of the state, and they shall have power to convey by deed to the purchaser thereof all the rights of the state therein; and they shall deposit all proceeds arising therefrom in the state treasury to the credit of the general fund.

Act 238, 1897, P. 314; Eff. Aug. 30.

AN ACT for the ascertainment and protection of the interests of the state in escheated estates.

13455. ESCHEATED PROPERTY; ATTORNEY GENERAL TO TAKE CHARGE. SECTION 1. *The People of the State of Michigan enact* That the attorney general of this state, shall, as hereinafter provided, take charge of all matters pertaining to lands or other property which may have escheated or which may hereafter escheat to the state by reason of the owners thereof dying intestate and leaving no legal heirs thereto.

13456. SAME; INVESTIGATION BY ATTORNEY GENERAL. SECTION 2. It shall be the duty of the attorney general to make investigations and inquire in every county of this state as to whether there is any property therein belonging to the estate of any deceased person who was, at the time of his death, a resident of any county herein, or who was a non-resident, but had property in any such county at the time of his death, and who shall have died intestate, leaving no legal heirs, and whose estate under the laws of descent of this state would become vested in the state; the kind and nature of such property, and the situation and condition thereof.

13457. SAME; ADMINISTRATION, PROCEDURE; NON - RESIDENT DECEDENT, JURISDICTION. SECTION 3. Whenever the attorney general has knowledge of any escheated estate, he shall immediately see that due administration thereof shall be had in the probate court of the county of which the deceased person owning such estate was an inhabitant or resident at the time of his death, or, if a non-resident, in a county in which such deceased person had any such estate at the time of his death. If such deceased person, at the time

of his death resided in any other state or country leaving such estate to be administered in this state, administration thereon shall be granted by the probate court of any county in which there shall be such estate to be administered, and the administration first (1st) legally granted shall extend to all the estate of the deceased in this state, and shall exclude the jurisdiction of the probate court of every other county.

13458. SAME; DUTY OF ATTORNEY GENERAL AS TO ADMINISTRATION. SECTION 4. Administration of the estate of any such person dying intestate shall be granted upon the application of the attorney general to one (1) or more suitable persons. It shall be the duty of the attorney general to see that such administration is promptly and properly carried on, and he shall represent the state and protect its interests in all matters pertaining to such estates. Such administration shall be in accordance with the general statutes governing the administration of estates of deceased persons, except as herein otherwise expressly provided.

13459. UNCALLED FOR BANK DEPOSITS; STATE INTEREST, PROTECTION BY ATTORNEY GENERAL. SECTION 5. It shall be the duty of the attorney general to protect the interest of the state in uncalled for deposits of money and securities made by any depositor with any person, co-partnership, company or corporation who shall be engaged in the business of banking within this state, in manner provided for in the six (6) following sections, viz:

13460. SAME; REPORT TO BANKING COMMIS-

SIONER, DUTIES, CONTENTS, SIGNATURES, FILING; FALSE STATEMENT, PERJURY. SECTION 6. On the thirtieth (30th) day of June in every year after the taking effect of this act it shall be the duty of each person, copartnership, company or corporation who shall be engaged in the trust business or the business of banking within this state, and as a part of such business, receive in any manner whatever, moneys or securities of persons upon deposit ,to make a report as hereinafter provided. Such report shall be made to the commissioner of banking and shall contain a truthful statement in detail of the following matters, viz:

First, The name of the person making a deposit or deposits with such person, copartnership, company or corporation where the person making such deposits has not had any dealings with such copartnership, company or corporation in relation to such depoits for a period of twenty (20) years or more after the date of the late deposit made by such person.

Second, The amount and date of such deposit and whether the same are in money or securities, and if the latter, the nature of the same;

Third, Any interest due on such deposits, if any, and the amount thereof;

Fourth, The sum total of such deposits, together with the interest added thereto due from such person, copartnership, company or corporation on account of such deposit or deposits and interest thereon to such depositor, but nothing contained herein shall require any cor-

poration or person renting locked boxes or safes in vaults for storage purposes to open or report concerning property stored therein. Such report itemized as aforesaid shall be signed by the person making the same and shall be sworn to before a person competent to administer oaths as a full, complete and truthful statement of each of the items therein contained, and if made for and on behalf of a copartnership or company, such report may be signed and sworn to by any person composing such copartnership or company and if made for and on behalf of a corporation, such report shall be signed and sworn to by the president of such corporation, but in each of the two (2) last instances such signing and swearing to such reports shall appear to be for and on behalf of such copartnership, company or corporation as the case may be. After the making, signing and swearing to such report as herein provided, the same shall be filed in the office of the commissioner of banking of the state of Michigan and it shall be the duty of such commissioner to indorse or cause to be indorsed thereon the time at which such report was received and filed, which indorsement shall be signed by such commissioner or some person legally competent to sign the same, and thereafter such report shall be and remain a part of the official records of the office of commissioner of banking. If any false statement in such report is signed and wilfully sworn to, it shall be deemed perjury on the part of the pesrson signing and swearing to the same and such person shall be liable to be proceeded against and punished as in other cases of perjury.

13461. SAME; FAILURE TO MAKE REPORT; PENALTY, COLLECTION. SECTION 7. If any person, copartnership, company or corporation shall after being required so to do by the commissioner of banking, fail to make, sign and swear to and file such report in manner and time as aforesaid, he, they, or it shall become liable to and shall forfeit to the people of the state of Michigan the penal sum of three hundred (300) dollars for each of such failures, and an additional penal sum of ten (10) dollars for each and every day while said report shall remain unfiled as aforesaid. Such penal sum or sums may be collected as hereinafter provided by an action in assumpsit or any other proper legal action to collect a debt, brought in the name and on behalf of the people of the state of Michigan in any court having legal jurisdiction thereof, and any judgment rendered therefor and costs of suit may be collected out of the property of such a person, copartnership, company or corporation against whom such judgment is rendered by execution in like manner as other judgments and costs of suit in such cases in such courts are collected.

13462. SAME; COLLECTION OF PENALTY BY ATTORNEY GENERAL, DISPOSITION. SECTION 8. It shall be the duty of the attorney general to commence any such action for the collection of such penal sum as hereinbefore provided and to duly prosecute them for effect. After any judgment for such penal sum or sums is rendered the amount of such judgment with costs of suit may be paid into court by the person, copartnership, company or corporation against whom the same shall be rendered or if in such judgment and costs are

collected by execution, the money collected on such judgment and costs shall be paid into court; and in either case the court receiving the money on such judgment shall immediately transmit the same or cause the same to be transmitted to the probate court of the county wherein such judgment was rendered, and it shall be the duty of the said probate court to give or cause to be given to the court transmitting such money a receipt for the same; and such probate court shall also as soon as possible transmit or cause to be transmitted the money so received to the state treasurer of the state, who shall give or cause to be given to such probate court his receipt therefor as such treasurer, which the said probate court shall file or cause to be filed in his office, and the same shall thereafter remain a part of the official records of such office. Such money so received by the state treasurer shall be placed to the credit of the primary school fund.

13463. SAME; FAILURE TO REPORT, DUTY OF ATTORNEY GENERAL; SUIT IN CHANCERY TO COMPEL REPORT. SECTION 9. It shall be the duty of the attorney general to see that such reports are properly made in manner and time as hereinbefore provided; and if the same are not filed in time and manner as hereinbefore provided, to take all proper steps to secure the proper making and filing of the same; and it shall be his duty to promptly prosecute to effect and to collect all such penal forfeitures hereinbefore provided for. In the protection of the interests of the state in such deposits as aforesaid, the attorney general shall have power and it is hereby created his duty in addition to the other means hereinbefore provided, if

he shall have good reason to believe that a proper disclosure has not been made by any firm, copartnership, company or corporation, in any of the reports in this act provided for, and that there are moneys or securities in their custody which have escheated to the state, to apply to the circuit court of the proper county by special motion for leave to file a bill in chancery, and upon due showing and leave granted to file a bill in chancery in the name and on behalf of the people of the state of Michigan against such person, copartnership, company or corporation in any court having jurisdiction of such suit in chancery or other proper proceedings to compel a full, complete and truthful statement of the matter in this act required to be contained in the reports aforesaid. In any suit or proceedings in this act provided for to be commenced against any such person, copartnership, company or corporation doing a banking business as aforesaid, no demand for security for costs shall be entertained by the court before whom such suit or proceedings shall be pending.

13464. PERSON MISSING SEVEN YEARS; ADMINISTRATOR; APPOINTMENT, RIGHT TO DEPOSITS. SECTION 10. If, by any of such reports in this act provided for it shall appear, or if in any manner it shall come to the knowledge of the attorney general that a person has deposited with any person, corporation, company or copartnership doing a banking or trust business, any money or securities and has had no dealings with such person, copartnership, company or corporation in regard thereto within seven (7) years from the date of the last deposit made by him, and that there is good reason to believe that such person is dead

and that his estate should escheat to the state of Michigan then, and in that case, it shall be the duty of the attorney general to take proceedings to have an administrator appointed in the proper probate court to administer upon the estate of such missing depositor as a deceased person. Such administrator shall be appointed as to person and manner of appointment as is provided for in sections three (3) and four (4) of this act. After the appointment of such administrator and upon his giving due and sufficient bonds to be required by the court, he shall have the right to demand and receive from any such person, copartnership, company or corporation having any deposits of money or securities of such missing person within its possession and control and he shall have all the rights of action to reduce such money or securities to his personal possession and control as administrator as aforesaid as any other administrator would have if, administering upon the estate of a deceased person.

13465. SAME; ADMINISTRATION AS TO DEPOSITS. SECTION 11. After such money and securities as above provided have been legally reduced to the possession and control of such administrator he shall proceed to administer thereon as is herein provided for the administration of escheated estates, and avails of such money or securities shall in like manner be disposed of as herein provided for the disposal of the avails of escheated estates.

13466. SAME; ADMINISTRATION OF OTHER PROPERTY. SECTION 12. Such administrator shall also administer upon all the other property belonging to

such missing person the same as if such missing person were known to be dead. Such administration, and the disposal of the avails of such property shall be in accordance with the provisions of this act in relation to escheated estates.

13467. SAME; PRESUMPTION OF DEATH; ADMINISTRATION OF ESTATE IF WITHOUT HEIRS. SECTION 13. If any person shall disappear and his whereabouts remain unknown for the space of seven (7) years, and no knowledge of such person can be procured for such space of seven (7) years, he shall be presumed to be dead, and if there are no person or persons found who would be his heir or heirs at law, if he were dead, administration shall be taken upon his estate in accordance with the provisions of this act in relation to escheated estates, and the avails of such estate shall be disposed of as provided in this act for the disposal of the avails of escheated estates.

13468. SAME; DUTIES OF PROSECUTING ATTORNEY AS TO ESTATE. SECTION 14. The attorney general shall have the right to call upon the prosecuting attorney of any county wherein any such estate is being administered for his services on any occasion in any matter relating to such estate; and such prosecuting attorney shall render such services whenever required by the attorney general without compensation therefor.

13469. DELIVERY OF PROPERTY TO STATE BOARD OF ESCHEATS; NOTICE TO ASSESSING OFFICER. SECTION 15. Whenever any such estate has been fully and completely administered by the pro-

bate court having jurisdiction thereof, the attorney general shall see that all the property of whatever name or nature remaining in such estate after due administration thereon is turned over to the care and custody of the state board of escheats and to their successors in office, who shall take the same as trustee thereof and who, as soon thereafter as possible shall cover such property, or the avails thereof, into the state treasury for the use of the primary school fund. If any such property consists of real estate, the state board of escheats shall send by registered mail a notice containing a description of the real estate so coming into the possession of the state to the assessing officer of the district in which such real estate is situate, and the same shall be sold and conveyed by said trustees in the manner as hereinafter set forth.

13470. SALE OF REALTY BY BOARD OF ESCHEATS; NOTICES, PUBLICATION, CONTENTS. SECTION 16. Whenever such real estate shall come into the care and custody of said trustees as provided for in the preceding section, the same shall be sold and conveyed by said trustees either by public or private sale as the said trustees shall deem to be the best interest of the state therein: *Provided,* That the same shall not be sold until a notice of the sale of same shall have been published at least three (3) successive weeks prior to said sale in some newspaper printed and circulated in the county in which the real estate is situate. If there be no newspaper printed and circulated in the county where said real estate is situate, then and in that case, said notice shall be published in a newspaper printed and circulated nearest to where said real

estate is situate. A notice of sale may also be published in such other manner as said trustees may deem to be for the best interests of the state in said real estate. Upon the sale of any such real estate, the board of escheats shall notify by registered mail the assessing officer of the district in which such real estate is situate, of such sale, which notice shall contain a description of the real estate sold, the date of the sale, and the name and address of the purchaser thereof.

13471. SAME; TIME; PURCHASE BY STATE EMPLOYE, PENALTY. SECTION 17. Such sale when the same shall be sold at a public sale shall be at a time designated by the state board of escheats between the hour of nine (9) o'clock in the morning and five (5) o'clock in the afternoon of the same day to the highest responsible bidder therefor: *Provided*, That no person employed by the state of Michigan shall by himself or by his agent or representative, either directly or indirectly, purchase any property so sold by the state board of escheats. Any sale so made shall be declared void and the purchaser shall be deemed guilty of a misdemeanor and upon conviction before any court of competent jurisdiction shall be fined not to exceed five hundred (500) dollars or imprisoned for a period not to exceed six (6) months.

13472. SAME; TERMS OF CREDIT, SECURITY. SECTION 18. On such sale, the said trustees may give such length of credit not exceeding three (3) years, and for not more than three-fourths (3/4) of the purchase money, as they shall deem best calculated to produce the highest price, and shall secure the moneys for

which credit is given by a bond of the purchaser, and by a mortgage on the real estate sold.

13473. SAME; AFFIDAVIT AS TO NOTICE; DEED. SECTION 19. An affidavit of said trustees, or one (1) of them, or of some other person having knowledge of the fact that notice of such sale was given as provided in this act, shall be made before some officer authorized to administer oaths, and shall be attached to the deed of conveyance given by said trustees on the sale of such real estate. Upon such sale, a deed of said real estate shall be made, executed and delivered to the purchaser or purchasers thereof by said trustees.

13474. SALE OF PERSONALTY BY BOARD OF ESCHEATS. SECTION 20. All personal property coming into the care and custody of said trustees may be sold and conveyed by them, either by public or private sale, as they shall deem to be the best interests of the state therein.

13475. RECORD OF BOARD OF ESCHEATS; CONTENTS, PLACE OF KEEPING. SECTION 21. Said trustees shall keep a full, true and accurate account of all the property of whatever name or nature, which shall come into their care or custody from such escheated estates; the nature of such property, and when received; the time and manner of the disposal thereof, the amount of moneys received therefor, and the time and amount of money covered into the state treasury on account of such estate; which account shall be kept in the office of the state treasurer and shall become a part of the public records of such office.

13476. ESCHEATED ESTATE, RECOVERY FROM STATE BY PERSON PRESUMED DEAD OR HIS HEIRS; PAYMENT. SECTION 22. If at any time within ten (10) years after real estate or personal property is assigned to the people of this state as an escheated estate, any person or persons shall file with the state board of escheats satisfactory proof, to be determined by said board of escheats, of the right of such person or persons, as husband, wife, heir-at-law, next of kin, devisee or legatee under a will, or assigns, to the estate of such deceased person, then in that case the state board of escheats shall cause such real estate or personal property, or the avails thereof whenever the same has been sold by the board of escheats, upon the payment to the said board of escheats by the person or persons so claiming the estate, of all expense to the state which may have been incurred by the state in relation to such estate, to be turned over to such person or persons, such part thereof as such person or persons may be lawfully entitled to out of such decedent's estate: *Provided,* That the persons supposed to be deceased and whose said estate has been administered and assigned to the people of the state as an escheated estate may at any time upon presenting to the board of escheats, satisfactory proof of his identity, receive the property so assigned to the state, or the avails thereof, less any expense incurred by the state with relation to such estate. Such payment shall be made out of the fund to which such avails shall have been credited.

13477. INDEMNIFICATION OF DEPOSITORY; PROOF OF LOSS, PAYMENT.| SECTION 23. Where moneys, securities or other personal property are paid

over or delivered to an administrator pursuant to sections eight (8), ten (10) and eleven (11) of this act, and such person, copartnership, company or corporation paying such money or delivering such securities or property are thereafter required to carry and perform their contract of deposit with the person or the heirs or assigns of the person making such deposit, the state of Michigan shall indemnify and pay to such person, copartnership, company or corporation, the amount of damage or loss which they may have sustained providing satisfactory proof thereof is made to the board of state auditors of the state of Michigan which board of state auditors shall allow the amount they find to be due to the auditor general who shall thereupon draw his warrant for such amount on the state treasurer who shall pay the same out of any moneys in the state treasury not otherwise appropriated.

COMPILED LAWS OF MICHIGAN FOR 1929—ACT NO. 205 OF THE PUBLIC ACTS OF MICHIGAN FOR 1925.

Section 15624. PERSONS ABSENT FOR SEVEN YEARS; PROVISIONS FOR PROPERTY. SECTION 1. The property, both real and personal, in the state of Michigan, of any person who has left for any reason whatsoever his or her last place of abode, as known by those persons most likely to know the same, shall be subject to the provisions of this act: PROVIDED, The absence has the following characteristics:

(a) The absence shall be for the continuous period of seven (7) years.

(b) The whereabouts of the person shall have been for the same period unknown by those persons most likely to know the same.

(c) The person shall for the like period have not been heard from by means of any message, oral or written, or by means of any token, received by those persons most likely to hear from the person.

(d) Those persons most likely to know the last place of abode and the whereabouts of the absent person, shall be the spouse left in the last place of abode, and the parents of the absent person; and if there be neither such spouse nor parent, such persons as the court shall determine upon proofs in each particular case.

15625. ADMINISTRATION OF ESTATES OF PERSONS ABSENT FOR SEVEN YEARS; CONDITIONS. SECTION 2. Whenever any person leaving property in the state of Michigan shall have been absent from his or her last known place of abode for the continuous period of seven (7) years with his or her whereabouts also for such period unknown to those persons most likely to know thereof, and such person has for the like period not been heard from by those persons most likely to hear from such person, the property of such person in the state of Michigan may be administered as though such person were dead, subject to the conditions, restrictions and limitations hereinafter described.

15626. SAME; JURISDICTION OF PROBATE COURTS. SECTION 3. The probate court of any county in the state where any real property of the absent person is located, and the probate court of any county where any personal property is located, in case there be no real property in the state, shall have jurisdiction in the premises.

15627. SAME; TITLE OF PROCEEDINGS. SECTION 4. The title of all proceedings commenced and prosecuted under the preceding sections of this act shall be "In the Matter of the Estate of ....., disappeared."

15628. SAME; PETITION. SECTION 5. The petition for administration or probate of the last will, as the case may be, of the absent person shall be verified to the best of the knowledge and belief of the petitioner; and the petition, in addition to allegations regarding the existence of property to be administered and the names and addresses (so far as known) of the persons who are the heirs-at-law, next of kin, devisees and legatees of the absent person (if deceased), shall contain allegations as to the last known place of abode of the absent person; when he or she disappeared therefrom; that fact that he or she has been continuously absent therefrom and has not been heard from by the persons most likely to hear (naming them and their relationship to the absent person) and the fact that his or her whereabouts are unknown to such persons.

15629. SAME; NOTICE OF HEARING ON PETITION. SECTION 6. Notice of hearing of the petition

for administration or probate of the last will of the absent person shall be published in the form of similar notice of hearing in the administration of the estates of deceased persons, once each calendar month for four (4) months prior to the month set for the hearing of the petition; and, in addition, within thirty (30) days after the filing of the petition, copies of the notice shall be sent by registered mail to each person named in the petition as heirs-at-law, next of kin, devisee and legatee; and due proof of such publication and such mailing shall be filed prior to the hearing.

15630. SAME; ISSUES OF FACT. SECTION 7. Upon the hearing of the petition, the truth of the allegations thereof regarding the last known place of abode of the absent person, his or her disappearance therefrom, knowledge of his or her whereabouts, and the fact of his or her having been heard from, shall be issues of fact to be determined by the court; and the testimony upon these questions shall be transcribed and filed in the case.

15631. SAME; SIGNED STATEMENTS OR ORAL DECLARATIONS AS EVIDENCE. SECTION 8. Upon the hearing of the petition, in case the testimony of any person most likely to know the last place of abode of the absent person, or to know his or her whereabouts, or to know whether he or she has been heard from, cannot be procured because of death, mental or physical incompetency, or removal to some jurisdiction where a deposition cannot be compelled by process of law, the signed statement in writing of the needed witness made to anyone, or the oral declaration of the

needed witnesses made to some person in no manner interested in said proceeding as creditor or beneficiary, may be received in evidence and given such weight as the court or jury shall decree proper.

15632. SAME; SALE OR DISPOSITION OF PROPERTY. SECTION 9. Except for the purposes of paying taxes, special assessments, liens, insurance premiums, allowed claims for debts contracted by the absent person before his or her disappearance, or to prevent great depreciation on account of neglect, or to specifically fulfill contracts made by the absent person before his or her disappearance, no sale, mortgage, or other disposition of the property of the absent person shall be had until the lapse of one (1) year after the appointment and qualification of the representative of his or her estate.

15633. SAME; DISTRIBUTION OF PROPERTY TO BENEFICIARIES. SECTION 10. No distribution nor assignment to beneficiaries of the property or the proceeds thereof of the absent person shall be made in any event until after the lapse of one (1) year after the appointment and qualification of the representative of his or her estate; nor shall such distribution or assignment be made until after the lapse of three (3) years after the appointment and qualification of the representative of his or her estate, unless the distributee or assignee execute and deliver to the representative a surety company bond in a penal sum not less than the value of the property distributed or assigned and for such additional amount as the court may prescribe, to be approved by the probate judge conditioned to return

the property or the value thereof to the representative in case the absent person be adjudicated in the manner hereinafter set forth to have been still living since the commencement of said period of seven (7) years, and also conditioned to save the representative harmless from the damages and expenses of all suits or proceedings brought by the absent person or anyone succeeding to his or her rights by reason of such distribution or assignment having been made during said period of three (3) years.

15634. PETITION BY ABSENTEE FOR RETURN OF PROPERTY; SERVICE, DETERMINATION; SECURITY FOR COSTS. SECTION 11. In case any person shall, within the period of three (3) years after the appointment and qualification of the representative, file his or her petition in the proceedings signed and verified by himself or herself or by his or her guardian (if an infant or mentally incompetent) claiming in such petition to be the absent person, and shall also cause a copy thereof to be served either personally or by registered mail upon the legal representative of the state and upon each beneficiary and upon the surety in any bond given to protect the representative in case of a distribution or assignment prior to the expiration of said period of three (3) years, an issue shall thereupon be framed by the court to determine the identity of the claimant, which issue shall be tried by the court: PROVIDED, HOWEVER, The court may upon the application of any interested party require the claimant to give security to be approved by the court for all costs and expenses involved in the trial of the issue and the ultimate determination thereof, in case the

issue be decided against the claimant.

15635. SAME; VACATION OF ADMINISTRATION PROCEEDINGS. SECTION 12. In case the issue last aforesaid be determined in favor of the claimant, an order shall be entered vacating all the proceedings for administration and in the course of administration; except those providing for the payment of taxes, special assessments, liens, insurance premiums, allowed claims, the specific fulfillment of contracts, the prevention of great depreciation on account of neglect; and also except any sale, mortgage, or other disposition of the property of the absent person to innocent persons for value made to effect the results first (1st) above excepted.

15636. DEATH OF ABSENTEE; PETITION OF CLAIMANT. SECTION 13. In case any person shall within the period of three (3) years after the appointment and qualification of the representative file his or her petition in the proceedings signed and verified by himself or herself or by his or her guardian (if an infant or mentally incompetent), claiming in such petition that the absent person died subsequently to the seven (7) year period aforesaid and that the petitioner is entitled to the property being administered or any portion thereof as successor to the rights of the absent person because of his or her death; and if the claimant shall also cause a copy of the petition to be served either personally or by registered mail upon the legal representative of the estate and upon each beneficiary and upon the surety in any bond given to protect the representative in case of a distribution or assignment prior

to the expiration of said period of three (3) years; an issue shall thereupon be framed by the court to try the truth of the petition, which issue shall be tried by the court: PROVIDED, HOWEVER, That court may upon the application of any interested party require the claimant to give security to be approved by the court for all costs and expenses involved in the trial of the issue and the ultimate determination thereof, in case the issue be decided against the claimant.

15637. SAME; VACATION OF ADMINISTRATION PROCEEDINGS. SECTION 14. In case the issue last aforesaid be determined in favor of the claimant, an order shall be entered vacating all of the proceedings for administration and in the course of administration; except those providing for the payment of taxes, special assessments, liens, insurance premiums, allowed claims, the specific fulfillment of contracts, the prevention of great depreciation on account of neglect; and also except any sale, mortgage, or other disposition of the property of the absent person to innocent persons for value made to effect the results first (1st) above excepted.

15638. ESTATE CLOSED WHEN NO CLAIM IS MADE. SECTION 15. In case no person makes claim during said period of three (3) years after the appointment and qualification of the representative either to be the absent person, or to have succeeded to the rights of the absent person since the commencement of said period of seven (7) years by reason of the death of the absent person, then a conclusive presumption shall arise that the absent person died prior to the filing of

the petition for administration or the probate of his or her will; and the estate shall be distributed accordingly, so far as the same has not already been accomplished; and by order of court the estate shall be closed and the liability of the representative to claimants ended, and the liability of distributees ended, and all bonds given by them cancelled: PROVIDED, That, if in any case such period of absence as set forth in section one (1) of this act shall have exceeded fifteen (15) years at the time of the filing of the petition for the appointment of an administrator, then said estate may be distributed and closed at the end of one (1) year, without a bond being given, with like effect as hereinbefore provided for at the end of three (3) years.

15639. SHARE OF BENEFICIARY ABSENT FOR SEVEN YEARS IN ESTATE; TIME FOR DISTRIBUTION. SECTION 16. Whenever any person shall die intestate, leaving property in the state of Michigan to be administered, and one (1) or some of the apparent beneficiaries of his or her estate is a person who has been absent from his or her last known place of abode for the continuous period of seven (7) years with his or her whereabouts unknown to those persons most likely to know thereof, and who has not been heard from by such persons during said period, no distribution or assignment of that portion of the estate which would be distributed and assigned to the absent person, if alive, shall be made until the lapse of three (3) years after the death of the decedent.

15640. SAME; DETERMINATION OF APPARENT BENEFICIARY; GUARDIAN AD LITEM. SECTION 17. The question whether or not there is an apparent beneficiary, as described in the next preceding section, shall be a question of fact to be determined by the court on its own motion or upon the verified petition of any interested party showing probable cause, at any time before a final order of assignment and distribution is made and after due notice by citation to all interested parties; and, if the possible existence of such beneficiary be disputed by any interested person, an issue shall be framed by the court to try the question, and the court shall appoint a guardian ad litem to represent the possible absent beneficiary at the expense of the ultimate assignee or distributee of the portion of the state involved.

15641. SAME; NOTICE OF DISTRIBUTION. SECTION 18. Prior to the distribution and assignment described in the second (2nd) preceding section, the representative of the estate shall by order of court cause to be published at the expense of the person or persons ultimately receiving said portion a notice signed by him and addressed to the absent person by name and also to his or her unknown heirs, next of kin, legatees, and devisees, stating that, unless cause to the contrary be shown, on a day certain after the lapse of said period of three (3) years an order of assignment and distribution will be made by the court of the portion of the estate aforesaid to certain persons, naming them and their relationship, if any, to the decedent and the proportions of their shares in the portion of the estate to be distributed.

15642. SAME; PUBLICATION OF NOTICE, SERVICE OF COPY BY REGISTERED MAIL. SECTION 19. The notice described in the next preceding section shall be published in some newspaper in general circulation in the county once each calendar month for four (4) months prior to the month containing the day certain when the order is to be made; and, in addition, within thirty (30) days after such order, copies of the notice shall be sent by registered mail to each person named in said notice as entitled to receive the portion, in the absence of cause to the contrary; and due proof of the publication and such mailing shall be filed prior to the entry of any order of assignment and distribution.

15643. SAME; DETERMINATION OF IDENTITY OF ABSENTEE CLAIMANT; SECURITY FOR COSTS. SECTION 20. In case any person claiming to be the absent person on the day certain shall appear in person or by a guardian, if an infant or mentally incompetent, or by an attorney authorized by him so to appear by a paperwriting signed by such person and thereupon filed, an issue shall thereupon be framed by the court to determine the identity of the claimant, which issue shall be tried by the court: PROVIDED, HOWEVER, The court may upon the application of any interested party require the claimant to give security to be approved by the court for all costs and expenses involved in the trial of the issue and the ultimate determination thereof, in case the issue be decided against the claimant.

15644. SAME; ASSIGNMENT TO CLAIMANT. SECTION 21. In case the issue last aforesaid be determined in favor of the claimant, an order shall be entered assigning to the claimant the portion of the estate aforesaid less the expenses.

15645. SAME; APPEARANCE OF PERSON CLAIMING RIGHTS DUE TO DEATH OF ABSENTEE; SECURITY FOR COSTS. SECTION 22. In case any person on the day certain shall appear in person, or by any attorney authorized by him so to appear by a paperwriting signed by such person and thereupon filed, and claim in a verified petition filed by him to be entitled to all or a share of the portion of the estate to be distributed, or a different proportion thereof from that described in the notice, by reason of having succeeded to the rights of the absent person because of the latter's death since his or her disappearance from his or her last known place of abode, an issue thereupon be framed, by the court to try the truth of the petition, which issue shall be tried by the court: PROVIDED, HOWEVER, The court may upon the application of any interested party require the claimant to give security to be approved by the court for all costs and expenses involved in case the issue be decided against the claimant.

15646. SAME; ASSIGNMENT TO CLAIMANT. SECTION 23. In case the issue last aforesaid be determined in whole or in part in favor of the claimant, an order shall be entered assigning to the claimant the proper portion of the estate less expense.

15647. SAME; DISTRIBUTION IN CASE OF NO CLAIM. SECTION 24. In case no person makes claim upon the day certain to any part of that portion of the estate which would be distributed to the absent person, if alive; or, in case the issue or issues framed are decided against the claimants, the portion of the estate in question less expenses shall be assigned and distributed by an order of court to that person or those persons described in the order to show cause as therein stated; and the absent person, and his or her unknown heirs, next of kin, legatees and devisees shall be forever barred from all claim or right thereto.

15648. ABSENCE FOR SEVEN YEARS OF PERSON QUALIFIED TO PETITION FOR ADMINISTRATION OR PROBATE; PETITION. SECTION 25. Whensoever any person shall die testate or intestate, leaving property in the state of Michigan to be administered, and the only person apparently qualified to petition for administration or probate of the last will is a person who has been absent from his or her last known place of abode for the continuous period of seven (7) years with his or her whereabouts unknown to those persons most likely to know thereof, and who has not been heard from by such persons during said period, a petition for administration or probate of the will may be made by any one who would be qualified so to do, if the absent person had pre-deceased the decedent, and the fact that the absent person may have left surviving issue unknown to those persons most likely to know thereof shall not affect the validity of such petition.

15649. APPEALS. SECTION 26. Appeals may be had to the circuit court as in the case of such appeals in matters relating to the estates of deceased persons, and the judgments of the circuit court may be reviewed in the supreme court on writ of error in like manner, in the following cases:

(a) By any person interested, as apparent beneficiary in the estate of any absent person, as defined, in this act, from an order appointing an administrator of such estate or denying such appointment; or from an order admitting a will of such absent person to probate or denying such admission.

(b) By any person adversely affected, from an order of sale, mortgage, or other disposition pior to an order of assignment and distribution of property of an absent person, as defined in this act.

(c) By any person adversely affected, from the allowance or disallowance in whole or in part of any claim against the estate of an absent person, as defined in this act.

(d) By any person adversely affected, from an order affirming or denying any claimant to be the absent person, whose estate is being administered.

(e) By any person adversely affected, from an order affirming the right of any client as successor of the absent person, whose estate is being administered.

(f) By any person adversely affected, from an order allowing or refusing to allow in whole or in part the account of any administrator or executor.

(g) By any person adversely affected, from an order

of assignment and distribution.

(h) By any person adversely affected, from any order where a like appeal or review would lie, in case the absent person were actually dead.

(i) By any person interested as beneficiary, from an order finding or refusing to find the existence of an apparent beneficiary, who has been absent as defined in this act.

(j) By any person adversely affected, from an order affirming or denying any claimant to be the absent person or as having succeeded to the rights of an absent person interested in the estate of a deceased person being administered.

15650. APPLICATION OF ACT; COMMENCEMENT OF PERIOD OF ABSENCE. SECTION 27. The provisions of this act shall apply to all cases of absence in the required manner from the last known place of abode for the continuous period of seven (7) years, whether such absence commenced heretofore and has been completed, or is still running, or shall hereafter commence to run.

15651. SAME; PENDING PROCEEDINGS. SECTION 28. The provisions of this act relating to the administration of the estate of decedents, where one (1) or more beneficiaries or the only beneficiary are persons who have been absent in the required manner from their last known place of abode for the continuous period of seven (7) years shall apply to pending proceedings: PROVIDED, HOWEVER, No orders of assignment or distribution have yet been made.

15652. COURT RULES REGULATING PRACTICE. SECTION 29. Appropriate rules of court may be promulgated by the supreme court to regulate the practice in matters covered by this act, in case that court deems it necessary.

15653. REPEAL. SECTION 30. All acts and parts of acts contravening the provisions of this act are hereby repealed.

No. 45.

AN ACT to amend act number two hundred thirty-eight of the public acts of eighteen hundred ninety-seven, entitled "An act for the ascertainment and protection of the interests of the state in escheated estates", as amended, being sections thirteen thousand four hundred fifty-five to thirteen thousand four hundred seventy-seven, inclusive, of the compiled laws of nineteen hundred twenty-nine, by adding thereto two new sections to stand as sections ten-a and ten-b thereof.

The People of the State of Michigan enact

SECTIONS ADDED.

Section 1. Act number two hundred thirty-eight of the public acts of eighteen hundred ninety-seven, entitled "An act for the ascertainment and protection of the interests of the state in escheated estates", as amended, being sections thirteen thousand four hundred fifty-five to thirteen thousand four hundred seventy-seven, inclusive, of the compiled laws of nineteen hundred twenty-nine, is hereby amended by adding thereto

two new sections to stand as sections ten-a and ten-b thereof, said added sections to read as follows:

ADMINISTRATION OF ESTATE OF PERSON MISSING SEVEN YEARS; PROOF OF ESCHEAT, NOTICES.

Sec. 10a. In case there are no known heirs it shall be sufficient proof for the purposes of escheat under sections ten and thirteen of this act, when it shall appear from reliable sources or from the books and records of the person, co-partnership, company or corporation with whom the disappeared or missing person has deposited monies, securities or any other property or when it shall appear from reliable sources or from the books and records of the person, corporation, company or co-partnership who may be in possession of any property belonging to the disappeared or missing person, that the disappeared or missing person has had no dealings with such person, co-partnership, company or corporation for a continuous period of seven years, in regard to such property: *Provided, however,* That within thirty days after the granting of administration upon the application by the attorney general or by the state public administrator, notice of the granting of such administration shall be published in the form of similar notices in the administration of the estates of deceased persons: *Provided further,* That additional publications shall be made once each calendar month for two months prior to the date of the final hearing for the closing of the estate: *Provided further,* That no other or additional proof or publication shall be required for the purposes of escheat under sections ten

and thirteen of this act except as herein provided.

SAME; COMBINATION OF ESTATES.

Sec. 10b. For the purposes of escheat under sections ten and thirteen of this act, it shall be lawful for the attorney general or the state public administrator to apply for the administration of more than one estate in one and the same proceeding: *Provided, however,* That the aggregate value of the known assets of the combined estates shall not exceed the sum of five hundred dollars: *Provided further,* That the publication requisite in the course of the administration of escheated estates shall also apply hereunder with the exception, however, that estates combined in accordance with the provisions of this section shall all be listed in the same issues of publication and no separate publication shall be required for the individual estates hereunder combined: *Provided further,* That a single surety bond sufficient to cover the aggregate value of the combined estates shall be filed by the administrator: *Provided further,* That in all other respects, and whenever advisable and possible the estates hereunder combined shall be treated in a similar manner that individual estates are treated under the provisions of this act.

This act is ordered to take immediate effect.

Approved April 6, 1933.

No. 171.

AN ACT to amend act number two hundred thirty-eight of the public acts of eighteen hundred ninety-seven, entitled "An Act for the ascertainment and

protection of the interests of the state in escheated estates", as amended, being sections thirteen thousand four hundred fifty-five to thirteen thousand four hundred seventy-seven, inclusive, of the compiled laws of nineteen hundred twenty-nine, by adding thereto five new sections to stand as sections nine-a, nine-b, nine-c, nine-d and nine-e.

The People of the State of Michigan enact

SECTIONS ADDED.

Section 1. Act number two hundred thirty-eight of the public acts of eighteen hundred ninety-seven, entitled "An act for the ascertainment and protection of the interests of the state in escheated estates", as amended, being sections thirteen thousand four hundred fifty-five to thirteen thousand four hundred seventy-seven, inclusive, of the compiled laws of nineteen hundred twenty-nine, is hereby amended by adding thereto five new sections to stand as sections nine-a, nine-b, nine-c, nine-d and nine-e thereof, said added sections to read as follows:

UNCALLED FOR BANK OR TRUST COMPANY DEPOSIT; LIQUIDATION, ESCHEAT.

Sec. 9a. When any bank or trust company, operating within this state, whose business is being liquidated and dissolved, shall have, be in possession or in control of, deposits of moneys and or securities to which no claim or for which no demand has been made within the period during which a claim or demand is by law or by decree required to be made by depositors, or when any bank or trust company operating within the

state whose business is being liquidated and dissolved, shall have, be in possession or in control of deposits of money and or securities which have been unclaimed for a period of seven years and regarding which the depositor thereof has had no dealings with such bank or trust company and or with the receiver, custodian or liquidating agent thereof, for a period of seven years from the date of the last deposit made by such depositor, such deposits of moneys and securities shall escheat to the people of the state of Michigan, and shall, at the discretion of the attorney general or state public administrator, be administered in the following manner:

SAME; DEMAND BY PUBLIC ADMINISTRATOR, PUBLICATION.

(a) The state public administrator, any time after the expiration of six months from the date of the appointment of such receiver, custodian or liquidating agent, shall make formal demand in writing upon the receiver, custodian or liquidating agent of such liquidating and dissolving bank or trust company, in behalf of the state of Michigan, for the transfer of such escheated deposits and for the payment of any dividends that have accrued or may accrue upon such escheated deposits, and it shall thereupon be the duty of such receiver, custodian or liquidating agent to transfer all such escheated deposits to the name and account of the "board of escheats of the state of Michigan" and to pay all dividends upon such escheated deposits to the board of escheats of the state of Michigan: *Provided, however,* That it shall not be necessary that the formal

demand shall enumerate the individual deposit, and no proof of claim shall be necessary to be filed for each individual deposit and payment for dividends may be made in a lump sum of more than one escheated deposit, if deemed advisable. The state public administrator shall cause the publishing of such demand at least once within thirty days after the date that the demand was made upon the receiver, custodian or liquidating agent in the same manner as probate notices are published and distributed in the county wherein the liquidating bank is located.

SAME; COUNTY PUBLIC ADMINISTRATORS, EXPENSES AND ALLOWANCES.

Sec. 9b. The state public administrator may engage county public administrators to assist him in the administration of such escheated deposits in liquidating banks and trust companies, under section nine-a of this act: *Provided, however,* That the county public administrators, when rendering services hereunder, shall not receive any salary nor other emoluments of office, but shall be allowed all necessary expenses incurred in the administration of such escheated deposits, together with such allowances for regular and extraordinary services as are authorized to be paid to administrators in the probate courts of the state of Michigan, which allowances shall be paid by the state treasurer, at the direction of the board of escheats of the state of Michigan, out of such escheated deposits.

SAME; RIGHTS OF DEPOSITORS, HEIRS OR ASSIGNS.

Sec. 9c. Depositors of such escheated funds, their heirs or assigns shall have no greater rights against the people of the state of Michigan than he or they would have had against the receiver, custodian or liquidating agent of the bank or trust company that was in possession or control of the escheated deposits enumerated in section nine-a of this act.

SAME; REPORT OF LIQUIDATING AGENT.

Sec. 9d. It shall be the duty of the liquidating agent to file a report of the deposits, which in accordance with the provisions of section nine-a of this act have escheated to the state of Michigan, upon the request of the attorney general or state public administrator, and the attorney general shall have authority to make an examination to determine such escheated deposits.

SAME; ADMINISTRATION OF FUNDS.

Sec. 9e. In all other respects, except as herein provided, funds escheated to the state of Michigan under section nine-a of this act shall be treated and administered in the same manner as other escheated estates.

This act is ordered to take immediate effect.

Approved June 28, 1933.

STATE OF MICHIGAN

61st LEGISLATURE

Regular Session of 1941

Public Act No. 170

AN ACT to amend the title and sections 5, 6, 6a, 7, 8, 9, 9a, 9b, 10, 10a, 10b, 22 and 23 of Act No. 238 of the Public Acts of 1897, entitled "An act for the ascertainment and protection of the interests of the state in escheated estates," as amended by Act No. 299 of the Public Acts of 1939; section 6a as added by Act No. 40 of the Public Acts of 1933, sections 10a and 10b as added by Act No. 45 of the Public Acts of 1933 and sections 9a and 9b as added by Act No. 171 of the Public Acts of 1933, being sections 13459, 13460, 13461, 13462, 13463, 13464, 13476 and 13477 of the Compiled Laws of 1929; and to add to said act 4 new sections to stand as sections 4a, 4b, 13a and 24 thereof; and to repeal sections 9c, 9d and 9e of said act.

The People of the State of Michigan enact:

Section 1. The title and sections 5, 6, 6a, 7, 8, 9, 9a, 9b, 10, 10a, 10b, 22 and 23 of Act No. 238 of the Public Acts of 1897, entitled "An act for the ascertainment and protection of the interests of the state in escheated estates," as amended by Act No. 299 of the Public Acts of 1939; section 6a as added by Act No. 40 of the Public Acts of 1933, sections 10a and 10b as added by Act No. 45 of the Public Acts of 1933 and sections 9a and 9b as added by Act No. 171 of the Public Acts of 1933, being sections 13459, 13460, 13461, 13462, 13463, 13464, 13476 and 13477 of the Compiled Laws of 1929, are hereby

amended and 4 new sections are hereby added to said act to stand as sections 4a, 4b, 13a and 24 thereof, said amended title and amended and added sections to read as follows:

TITLE

An act to provide for the discovery by the state board of escheats or the attorney general of escheated and escheatable estates, including abandoned property, and providing the procedure to declare such property escheated to the state, and for the disposition thereof, and declaring the statute of limitations not applicable to such proceedings.

Sec. 4a. In the administration of the estates of disappeared or missing persons to escheat unclaimed, uncalled for or abandoned money, securities, credits or property of any kind in the probate court, the fees allowed by the probate court to the county public administrators shall not exceed a total of more than 15 per cent of the cash value of the property handled by them.

Sec. 4b. The words "person" or "persons" as used in this act shall be understood and interpreted to mean and include a natural person, a copartnership, a company, an association, a bank, a trust company, a corporation, except municipal corporations, or any officer thereof, any governmental department, agency, instrumentality or official, a depository, a receiver, a trustee, a fiduciary, a debtor, a custodian, a liquidating officer, or any combination of natural persons.

The words "depositor" or "depositors" as used in this act shall be understood and interpreted to mean

and include any person, or persons, as above defined, who or which is the legal or equitable owner or creditor entitled to the possession of any property, real, personal or mixed, including liquidated choses in action, which is in the possession or under the control of any other person, as above defined, who or which is indebted or accountable for any such property to such depositor.

The word "deposit" as used in this act shall be understood and interpreted to mean and include money, credits, securities, liquidated choses in action and property of any kind or nature.

The word "depository" as used in this act shall be understood and interpreted to mean and include any person, as above defined, who or which has in his or its possession or under its control any property, real, personal or mixed, including liquidated choses in action, for which he or it is indebted or accountable to any other person as depositor.

The word "escheatable" as used in this act shall be understood and interpreted to refer to and include all property of whatever nature, the title to which has accrued and vested in the state by operation of any statute of this state, by reason of there being no known heirs, devisees, legatees or assignees of the last known owner.

The word "escheatable" as used in this act shall be understood to refer to and include all property of whatever kind or nature, including liquidated choses in action, over which the state has power to assume control

by appropriate proceedings, by reason of its having lain dormant, unclaimed, uncalled for or abandoned as in this act provided.

Sec. 5. It shall be the duty of the attorney general to protect the interests of the state in any unclaimed, uncalled for or abandoned money, securities, credits or property of any kind, held by or in the possession or control of any person, or persons, in the name of or for the use and benefit of any other person, or persons, in manner provided for in this act.

Sec. 6. On the thirtieth day of June in every year after the taking effect of this act, it shall be the duty of each person within this state, who or which as a depository is indebted or accountable to any other person for money, credits, securities or property of any kind to make a report as hereinafter provided.

Such report shall be made to the state board of escheats and shall contain a truthful statement, in detail of the following matters, viz.:

First, The name of the depositor, or the name of the person in whose name any such deposit, or deposits, of any kind is held by any such person, or depository, where no dealings or transactions have been had between the depositor and the depository with respect to any money, credits, securities or property of any kind for a period of 7 years or more: *Provided, however,* That notice in writing to the depository by the depositor, his heirs, representatives or assigns, to keep the deposit alive, shall be construed as a transaction within the meaning of this subsection;

Second, The date of such deposit or deposits, by the depositor with the depository, or credit or credits by the depository to the depositor and whether they are in money, securities, or other property, and if not in money, the nature of the same;

Third, Any interest due on such deposits, money, securities, credits or other property, if any, and the amount thereof;

Fourth, The sum total of such deposit, deposits, money, securities, credits or other property, together with the interest added thereto;

Fifth, Such report, itemized as aforesaid, shall be signed by the natural person making the same and shall be sworn to before a natural person competent to administer oaths as a full, complete and truthful statement of each of the items therein contained. If such report is made for and on behalf of a copartnership, company or association, such report may be signed and sworn to by any member of such copartnership, company or association or some person duly authorized who has knowledge of the facts. If such report is made for and on behalf of a corporation, private or municipal, such report shall be signed and sworn to by the president, vice-president or treasurer of such corporation, and such signing and swearing to such reports shall appear to be for and on behalf of such corporation.

After the making, signing and swearing to such report as herein provided, the same shall be filed in the office of the state board of escheats of the state of Michi-

gan and it shall be the duty of the secretary of said board of escheats to endorse or cause to be endorsed thereon the time at which such report was received and filed, which endorsement shall be signed by such secretary or some person legally competent to sign the same, and there after such report shall be and remain a part of the official records of the office of the state board of escheats.

If any false statement in such report is signed and wilfully sworn to, it shall be deemed perjury on the part of the person signing and swearing to the same, and such person shall be liable to be proceeded against and punished as in other cases of perjury.

Sec. 6a. Upon receiving information or having good reason to believe that any money, credits, securities or property of any kind, has been unclaimed, uncalled for, or abandoned, as provided in sections 9a and 13a hereof, the state board of escheats or the attorney general shall make demand in writing for a report, as provided herein from the person acting as a depository, as hereinabove defined, who or which has in his or its possession or control such unclaimed, uncalled for, or abandoned property.

Within 60 days after receiving such demand in writing from the state board of escheats, or the attorney general, it shall be the duty of each person receiving such a demand, who or which is a depository as hereinabove defined, to make, sign, swear to and file, or cause to be made, signed, sworn to and filed, a report in form and substance as provided in section 6 of this act. In

case of liquidating or dissolving depositories, the report shall be based on the form provided by section 6, and the substance of the report shall include all property as provided in section 9a of this act, where no dealings or transactions have been had between the depositor and the depository with respect to such property for a period of 7 years or more.

The state board of escheats shall examine, or cause to be examined, such reports with respect to any escheated or escheatable property and report the same to the attorney general or the state public administrator, who shall take such action as may be necessary to escheat or have decreed abandoned such escheated, escheatable or abandoned property as shown in such report.

In making such examination the state board of escheats or the attorney general shall have all the powers with respect to examination of the books and records of the depositories making such reports as are provided by the banking laws of this state with respect to examination of banks.

Sec. 7. If any depository, as hereinabove defined, shall, after being required so to do by the state board of escheats or the attorney general, as hereinbefore provided, fail to make, sign, swear to and file, or cause to be made, signed, sworn to and filed such report in manner, form, substance and time as aforesaid, he, they or it shall become liable to and shall forfeit to the people of the state of Michigan the penal sum of $300.00 for each such failure, and an additional penal sum of $10.00

for each and every day while such report shall remain unfiled as in this act provided.

Such penal sum or sums may be collected as hereafter provided by an action in assumpsit or any other proper legal action to collect a debt, brought in the name and on behalf of the people of the state of Michigan in any court having legal jurisdiction thereof, and any judgment rendered therefor and costs of suits may be collected in like manner as other judgments and costs of suit in such cases in such courts are collected.

Sec. 8. It shall be the duty of the attorney general to commence any such actions for the collection of such penal sums as hereinbefore provided and to duly prosecute them to effect. After any judgment for such penal sum or sums is rendered, the amount of such judgment with costs of suit may be paid into court by the judgment debtor against whom the same shall be rendered, or if such judgment and costs are collected by execution, the money collected on such judgment and costs shall be paid into court; and in either case the court or clerk thereof receiving the money on such judgment shall immediately transmit the same or cause the same to be transmitted to the state treasurer of the state, who shall give or cause to be given to such court rendering such judgment and transmitting such money his receipt therefor as such treasurer, which receipt such court or clerk thereof shall file or cause to be filed in his office, and the same shall thereafter remain a part of the official records of such office. Such money so received by the state treasurer shall be placed to the credit of the primary school fund.

Sec. 9. It shall be the duty of the said board of escheats to see that such reports are properly made in manner and time as hereinbefore provided; and if the same are not filed in time and manner as hereinbefore provided, to take all proper steps to secure the proper making and filing of the same; and it shall be the duty of the attorney general to promptly prosecute to effect and to collect all such penal forfeitures hereinbefore provided for. In the protection of the interests of the state in such deposits or property of any kind as aforesaid, the attorney general shall have power and it is hereby created his duty in addition to the other means hereinbefore provided, if he shall have good reason to believe that a proper disclosure has not been made by any person as depository in any of the reports in this act provided for, and that there are moneys, securities, credits or property of any kind in their custody or under their control which has escheated or is escheatable to the state, to apply to the circuit court of the proper county by special motion for leave to file a bill in chancery, and upon due showing and leave granted to file a bill in chancery in the name and on behalf of the people of the state of Michigan as depository in any court having jurisdiction of such suit in chancery, or other proper proceedings to compel a full, complete and truthful statement of the matter in this act required to be contained in the reports aforesaid. In any suit or proceedings in this act provided for to be commenced against any such depository no demand for security for costs shall be entertained by the court before whom such suit or proceeding shall be pending.

Sec. 9a. When any depository, as hereinbefore de-

fined, operating within this state, whose business is being liquidated or dissolved, shall have, be in possession of or in control of, in any way or manner, of any money, securities, credits or property of any kind belonging to any depositor or depositors for which no claim has been filed or for which no demand has been made within the period during which a claim or demand is by law or by decree required to be filed or made by depositors, or when any depository operating within this state, whose business is being liquidated or dissolved, shall have, be in possession or in control, as aforesaid of any money, securities, credits or property of any kind regarding which the depositor thereof has filed no claim and has had no dealings with such depository and/or with the receiver, custodian or liquidating agent thereof, for a period of 7 years from the date of the last deposit or transaction, such money, securities, credits or property of any kind shall be subject to escheat to the people of the state of Michigan, as other escheated, escheatable or abandoned property, and shall, at the discretion of the attorney general or the state public administrator, be administered as in this act provided, or the attorney general may intervene for and on behalf of the people of the state of Michigan in any pending suit or may institute suit to have such property decreed to have escheated and be escheated to the state.

The attorney general shall have the right and be permitted to file 1 or more claims with the receiver, trustee, custodian or liquidating agent of such depository, which shall be allowed or disallowed the same as if filed by the depositor, and subject to the same set-offs.

Such claim or claims filed by the attorney general shall cover and include all deposits for which no claims have been filed by the depositor or depositors, and may be filed at any time before payment of final dividend. Dividends shall be paid to the state board of escheats on all claims so filed by the attorney general, and allowed.

Sec. 9b. Where money, securities, credits or property of any kind has been unclaimed, uncalled for, or abandoned, as set forth in section 13a hereof for a period of 7 years or more by the depositor or owner thereof, the attorney general may, in the name of the people of the state of Michigan, institute suit in the circuit court in chancery to escheat to the state such unclaimed, uncalled for, or abandoned property, or may interevne for such purpose in any suit. The circuit court in chancery of the county in which the depository, having the possession or control of such property, is located or has his or its principal office, shall have complete jurisdiction and full power and authority in the premises. Any depository having possession or control of such property and the depositors or owners of such property shall be made parties defendant in such suit. Any number of depositors or owners and any number of depositories may be joined as parties defendant. Personal service shall be made upon such depositories having possession or control of such unclaimed, uncalled for, or abandoned property, and upon such depositors or owners if they or it be found in the county and if not by publication for 6 successive weeks in a newspaper printed and published in the county and circulating therein. Said court at the hearing of said cause shall, upon a finding that such property has been abandoned, decree such

property escheated or transferred to the state and direct that the same be paid over to or delivered to the state board of escheats, to be held by said board as other escheated property.

Sec. 10. If, by any of such reports in this act provided for, it shall appear, or if in any manner it shall come to the knowledge of the attorney general that a depositor has on deposit with a depository any money, securities, credits or property of any kind, or that there has been deposited or left with any such depository any money, securities, credits or property of any kind, in the name of any depositor whose identity is unknown, and that no dealings or transactions have been had in regard to such property between the depositor and the depository within 7 years from the date of the last deposit made by such depositor, or credit (not including voluntary credits) and that there is good reason to believe that such depositor is dead and that his estate should escheat to the state of Michigan; then, and in that case it shall be the duty of the attorney general or the state public administrator to take proceedings forthwith to have an administrator appointed in the proper probate court to administer upon the estate of such missing depositor as a deceased person and it shall be the duty of the state board of escheats to compel the institution of such proceedings. Such administrator shall be appointed as to person and manner of appointment as is provided for in sections 3 and 4 of this act.

After the appointment of such administrator and upon his giving due and sufficient bonds to be required

by the court, he shall have the right and it shall be his duty to demand and receive from any such depository having in its possession or under its control any deposits of money, securities, credits or property of any kind of such missing depositor, as provided in this act, and he shall have all the rights of action to reduce such money, credits, securities or property of any kind to his personal possession and control as administrator as aforesaid, as any other administrator would have if administering upon the estate of a deceased person.

If there are no known heirs, legatees, devisees or assigns of such missing depositor, upon the allowance of his final report and accounting by the probate court such administrator shall assign all property or funds remaining in such estate to the state board of escheats.

Sec. 10a. In case there are no known heirs, legatees, devisees or assigns of a depositor, it shall be sufficient proof for the purposes of escheat under the provisions of this act, when it shall appear from reliable sources and from the books and records of the depository with whom the disappeared or missing depositor has money, securities, credits or property of any kind belonging to or standing in the name of any such disappeared or missing depositor, that such disappeared or missing depositor who has had no dealings or transactions with such depository for a continuous period of 7 years in regard to such property: *Provided, however,* That within 30 days after the granting of administration upon the application by the attorney general or by the state public administrator, notice of the granting of such administra-

tion shall be published in the form of similar notices in the administration of the estates of deceased persons: *Provided further,* That notice of the hearing on the final account of the administrator shall be published once each week for 3 weeks consecutively prior to the date of the final hearing for the closing of the estate: *Provided further,* That no other or additional notices or proof or publication shall be required for the purposes of escheat in the probate court under the provisions of this act except as herein provided.

Sec .10b. For the purposes of escheat in the probate court under sections 9a, 10, 13 and 13a of this act, it shall be lawful for the attorney general or the state public administrator to apply for administration of more than 1 estate in 1 and the same proceeding: *Provided, however,* That the aggregate value of the known assets of the combined estates shall not exceed the sum of $1,000.00: *Provided further,* That the publication requisite in the course of the administration of escheated estates shall also apply hereunder with the exception, however, that estates combined in accordance with the provisions of this section shall all be listed in the same issues of publication and no separate publication shall be required for the individual estates hereunder combined: *Provided further,* That notices of appointment of an administrator of 2 or more combined estates published in the same issues of the paper, where the appointment of the administrator of such 2 or more combined estates was made on the same day, may list the names of each combined estate under a proper title and proceeding number, with only 1 notice of appointment immediately following the listing of all the names in

the combined estates: *Provided further,* That notices of hearing on the final accounts on 2 or more combined estates published in the same issue of the paper, where the hearings are set for the same day, may list the names in each combined estate under a proper title and proceeding number, with only 1 notice of hearing immediately following the listing of all the names in the combined estates: *Provided further,* That a single surety bond sufficient to cover the aggregate value of the combined estates in each proceeding shall be filed by the administrator: *Provided further,* That in all other respects, and whenever advisable and possible estates hereunder combined shall be treated in a similar manner that individual estates are treated under the provisions of this act.

Sec. 13a. If any depositor, as hereinbefore defined, who or which has any money, credits, securities or property of any kind, which is in the possession or under the control of any depository, doing business, located or operating within this state, where no dealings or transactions have been had with respect to any such property between such depositor and the depository having possession or control of such property for a period of 7 years or more, such depositor shall be presumed to have abandoned such property, and such property shall escheat to this state.

No statute of limitations of this state shall be a defense to any proceeding or action to escheat, have decreed escheated or abandoned any money, credits, securities or property of any kind to the state of Michigan, or any proceeding or action to secure possession of any

such property by the state or anyone acting for and on behalf of the state.

Sec. 22. If at any time after real estate or personal property is assigned to the people of this state as an escheated estate, or as abandoned property, any person or persons shall file with the state board of escheats satisfactory proof, to be determined by said board of escheats, of the right of such person or persons, as husband, wife, heir-at-law, next of kin, devisee or legatee under a will, or assigns, to the estate of such disappeared, missing or deceased person, then in that case the state board of escheats shall cause such real estate or personal property, or the avails thereof, whenever the same has been sold by the board of escheats, upon the payment to the said board of escheats by the person or persons so claiming the estate, of all expenses to the state which may have been incurred by the state in relation to such estate, to be turned over to such person or persons, or such part thereof as such person or persons may be lawfully entitled to out of the estate of such disappeared, missing or deceased person.

At any time after any money, securities, credits or property of any kind is assigned to people of this state as an escheated estate or as abandoned property, any assignee of any depositor, other than a depositor who was a natural person, shall file with the state board of escheats satisfactory proof, to be determined by said board of escheats, of the right of such assignee to the money, securities, credits or property of any kind which has been escheated or decreed to have been abandoned, then in that case, the state board of escheats shall cause

such money, securities, credits or property of any kind, or the avails thereof, when the same has been sold to be turned over to the assignee, or such part thereof as such assignee may be legally entitled to out of such escheated or abandoned property.

The depositor presumed to be deceased, or to have abandoned his property, and whose said estate has been administered, or whose property has been decreed to have been abandoned, and assigned to the people of the state as an escheated estate, or as abandoned property, may at any time upon presenting to the board of escheats, satisfactory proof of his identity and right to such assigned property, receive the property so assigned to the state, or the avails thereof, and in addition thereto shall be paid the amount of administration costs and expenses which have been charged against and paid out of his estate. Such payments shall be made out of any money in the state treasury which has been derived from escheated estates or abandoned property.

Any depositor, his heirs, legatees, devisees or assigns may have a final decision of the state board of escheats under this section reviewed by the supreme court by certiorari.

Sec. 23. Where money, securities or other personal property is paid over or delivered to an administrator, or to the state board of escheats, pursuant to the preceding sections of this act, and any depository, as hereinbefore defined in this act, paying such money or delivering such securities or property is thereafter re-

quired to carry out and perform their contract of deposit with the depositor, as hereinbefore defined in this act, or the heirs, holders for value or assigns of such depositor making such deposit, or the person in whose name such property was held, possessed or controlled, as provided in this act, the state of Michigan shall indemnify and pay to such depository the amount of damage or loss which they may have sustained, providing satisfactory proof thereof is made to the state board of escheats of the state of Michigan, which state board of escheats shall allow the amount they find to be due and certify the same to the auditor general, who shall thereupon draw his warrant for such amount on the state treasurer, who shall pay the same out of any money in the state treasury which has been derived from escheated estates or abandoned property.

Any depository, his or its heirs or assigns, may have any final decision of the state board of escheats under this section reviewed by the supreme court by certiorari.

Sec. 24. Should any portion or section of this act be held invalid for any reason, such holding shall not be construed as affecting the validity of any remaining portion of such section or of this act, it being the legislative intent that this act shall stand notwithstanding the invalidity of any such portion or section.

Section 2. Sections 9c, 9d and 9e, as added by Act No. 171 of the Public Acts of 1933, are hereby repealed.

This act is ordered to take immediate effect.

Sec. 191—Title 12, U. S. C.

Whenever any national banking association shall be dissolved, and its rights, privileges, and franchises declared forfeited, as prescribed in section 93, or whenever any creditor of any national banking association shall have obtained a judgment against it in any court of record, and made application, accompanied by a certificate from the clerk of the court stating that such judgment has been rendered and has remained unpaid for the space of thirty days, or whenever the comptroller shall become satisfied of the insolvency of a national banking association, he may, after due examination of its affairs, in either case, appoint a receiver who shall proceed to close up such association, and enforce the personal liability of the shareholders, as provided in section 192.

Sec. 192—Title 12, U. S. C.

On becoming satisfied, as specified in sections 131 and 132 of this title, that any association has refused to pay its circulating notes as therein mentioned, and is in default, the Comptroller of the Currency may forthwith appoint a receiver, and require of him such bond and security as he deems proper. Such receiver, under the direction of the comptroller, shall take possession of the books, records, and assets of every description of such association, collect all debts, dues, and claim belonging to it, and, upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, and, on a like order, may sell all the real and personal property of such association, on such terms as the court shall direct; and

may, if necessary to pay the debts of such association, enforce the individual liability of the stockholders. Such receiver shall pay over all money so made to the Treasurer of the United States, subject to the order of the comptroller, and also make report to the comptroller of all his acts and proceedings.

Provided, That the comptroller may, if he deems proper, deposit any of the money so made in any regular Government depositary, or in any State or national bank either of the city or town in which the insolvent bank was located, or of a city or town as adjacent thereto as practicable; if such deposit is made he shall require the depositary to deposit United States bonds or other satisfactory securities with the Treasurer of the United States for the safekeeping and prompt payment of the money so deposited:

Provided, That no security in the form of deposit of United States bonds, or otherwise, shall be required in the case of such parts of the deposits as are insured under section 264 of this title. Such depository shall pay upon such money interest at such rate as the comptroller may prescribe, not less, however, than 2 per centum per annum upon the average monthly amount of such deposits.

Sec. 193—Title 12, U. S. C.

The comptroller shall, upon appointing a receiver, cause notice to be given, by advertisement in such newspapers as he may direct, for three consecutive months, calling on all persons who may have claims against such association to present the same, and to make legal

proof thereof.

Sec. 194—Title 12, U. S. C.

From time to time, after full provision has been first made for refunding to the United States any deficiency in redeeming the notes of such association, the comptroller shall make a ratable dividend of the money so paid over to him by such receiver on all such claims as may have been proved to his satisfaction or adjudicated in a court of competent jurisdiction, and, as the proceeds of the assets of such association are paid over to him, shall make further dividends on all claims previously proved or adjudicated; and the remainder of the proceeds, if any, shall be paid over to the shareholders of such association, or their legal representatives, in proportion to the stock by them respectively held.

Sec. 197—Title 12, U. S. C.

Whenever any association shall have been or shall be placed in the hands of a receiver, as provided in section 192 and other sections of this Code, and when, as provided in section 194 thereof, the Comptroller of the Currency shall have paid to each and every creditor of such association, not including shareholders who are creditors of such association, whose claim or claims as such creditor shall have been proved or allowed as therein prescribed, the full amount of such claims, and all expenses of the receivership and the redemption of the circulating notes of such association shall have been provided for by depositing lawful money of the United States with the Treasurer of the United States, the Comptroller of the Currency shall call a meeting

of the shareholders of such association by giving notice thereof for thirty days in a newspaper published in the town, city or county where the business of such association was carried on, or if no newspaper is there published, in the newspaper published nearest thereto. At such meeting the shareholders shall determine whether the receiver shall be continued and shall wind up the affairs of such association, or whether an agent shall be elected for that purpose, and in so determining the said shareholders shall vote by ballot, in person or by proxy, each share of stock entitling the holder to one vote, and the majority of the stock in value and number of shares shall be necessary to determine whether the said receiver shall be continued, or whether an agent shall be elected. In case such majority shall determine that the said receiver shall be continued, the said receiver shall thereupon proceed with the execution of his trust, and shall sell, dispose of, or otherwise collect the assets of the said association, and shall possess all the power and authority, and be subject to all the duties and liabilities originally conferred or imposed upon him by his appointment as such receiver, so far as the same remain applicable. In case the said meeting shall, by the vote of a majority of the stock in value and number of shares, determine that an agent shall be elected, the said meeting shall thereupon proceed to elect an agent, voting by ballot, in person or by proxy, each share of stock entitling the holder to one vote, and the person who shall receive votes representing at least a majority of stock in value and number shall be declared the agent for the purposes hereinafter provided; and whenever any of the shareholders of the association shall, after the election of such

agent, have executed and filed a bond to the satisfaction of the Comptroller of the Currency, conditioned for the payment and discharge in full of each and every claim that may thereafter be proved and allowed by and before a competent court, and for the faithful performance of all and singular the duties of such trust, the comptroller and the receiver shall thereupon transfer and deliver to such agent all the undivided or uncollected or other assets of such association then remaining in the hands or subject to the order and control of said comptroller and said receiver, or either of them; and for this purpose said comptroller and said receiver are hereby severally empowered and directed to execute any deed, assignment, transfer, or other instrument in writing that may be necessary and proper; and upon the execution and delivery of such instrument to the said agent the said comptroller and the said receiver shall by virtue of this chapter be discharged from any and all liabilities to such association and to each and all the creditors and shareholders thereof. Upon receiving such deed, assignment, transfer, or other instrument the person elected such agent shall hold, control, and dispose of the assets and property of such association which he may receive under the terms hereof for the benefit of the shareholders of such association, and he may in his own name, or in the name of such association, sue and be sued and do all other lawful acts and things necessary to finally settle and distribute the assets and property in his hands, and may sell, compromise, or compound the debts due to such association, with the consent and approval of the district court of the United States for the district where the business of such association was carried on, and

shall at the conclusion of his trust render to such district court a full account of all his proceedings, receipts, and expenditures as such agent, which court shall, upon due notice, settle and adjust such accounts and discharge said agent and the sureties upon said bond.

And in case any such agent so elected shall refuse to serve, or die, resign, or be removed, any shareholder may call a meeting of the shareholders of such association in the town, city, or village where the business of the said association was carried on, by giving notice thereof for thirty days in a newspaper published in said town, city, or village, or if no newspaper is there published, in the newspaper published nearest thereto, at which meeting the shareholders shall elect an agent voting by ballot. in person or by proxy, each share of stock entitling the holder to one vote, and when such agent shall have received votes representing at least a majority of the stock in value and number of shares, and shall have executed a bond to the shareholders conditioned for the faithful performance of his duties, in the penalty fixed by the shareholders at said meeting, with two sureties, to be approved by a judge of a court of record, and file said bond in the office of the clerk of a court of record in the county where the business of said association was carried on, he shall have all the rights, powers, and duties of the agent first elected as hereinbefore provided. At any meeting held as hereinbefore provided administrators or executors of deceased shareholders may act and sign as the decedent might have done if living, and guardians of minors and trustees of other persons may so act and

sign for their ward or wards or *cestui que trust.* The proceeds of the assets or property of any such association which may be undistributed at the time of such meeting or may be subsequently received shall be distributed as follows:

First. To pay the expenses of the execution of the trust to the date of such payment.

Second. To repay any amount or amounts which have been paid in by any shareholder or shareholders of such association upon and by reason of any and all assessments made upon the stock of such association by the order of the Comptroller of the Currency in accordance with the provisions of the statutes of the United States; and

Third. The balance ratably among such stockholders, in proportion to the number of shares held and owned by each. Such distribution shall be made from time to time as the proceeds shall be received and as shall be deemed advisable by the said comptroller or said agent.

Sec. 264 (n)(3)—Title 12, U. S. C.

Receivers or liquidators of insured banks closed on account of inability to meet the demands of their depositors shall be entitled to offer the assets of such banks for sale to the Corporation or as security for loans from the Corporation, upon receiving permission from the appropriate State authority in accordance with express provisions of State law in the case of insured State banks, or from the Comptroller of the

Currency in the case of national banks or District banks. The proceeds of every such sale or loan shall be utilized for the same purposes and in the same manner as other funds realized from the liquidation of the assets of such banks. The Comptroller of the Currency may, in his discretion, pay dividends on proved claims at any time after the expiration of the period of advertisement made pursuant to section 193 of this title, and no liability shall attach to the Comptroller of the Currency or to the receiver of any national bank by reason of any such payment for failure to pay dividends to a claimant whose claim is not proved at the time of any such payment. The Corporation, in its discretion, may make loans on the security of or may purchase and liquidate or sell any part of the assets of an insured bank which is now or may hereafter be closed on account of inability to meet the demands of its depositors, but in any case in which the Corporation is acting as receiver of a closed insured bank, no such loan or purchase shall be made without the approval of a court of competent jurisdiction.